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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 21, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Wednesday, February 7, 1996

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206–AG50

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document clarifies the final regulations governing the Combined Federal Campaign (CFC) which were published on November 24, 1995, (60 FR 57889). Included in those regulations are the eligibility criteria and public accountability standards for participating charitable organizations.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Lee, 202–606–2564.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction, superseded 5 CFR 950 on the effective date and affect organizations applying for participation in the Combined Federal Campaign.

Need for Correction

As published, the final regulations regarding the public accountability standard for public and government support may mislead an otherwise eligible organization which actually has appropriate funding sources from applying and/or participating in the CFC. The correcting language sets forth the proper accountability process, and allows for the correct computation of funding sources to determine if the organization meets CFC standards. In addition, § 950.501(b) refers to a section which was eliminated from the proposed regulations and combined with § 950.501 of the final regulations. Applicant charitable organizations will benefit from these clarifications.

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employee, Military personnel, Nonprofit organizations, Reporting and recordkeeping requirements.

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Accordingly, 5 CFR 950 is corrected by making the following correcting amendments:

1. The authority citation for Part 5 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

§ 950.203 [Corrected]

2. In § 950.203, paragraph (a)(10) is revised to read as follows:

§ 950.203 Public accountability standards.

(a) * * *

(10) Certify that the organization has received no more than 80 percent of its total support and revenues from government sources as computed by dividing line 1c by line 12 from the IRS Form 990 submitted pursuant to § 950.203(a)(3).

§ 950.501 [Corrected]

* * * * *

3. In § 950.501, in paragraph (b) remove ''§ 950.502'' and insert, ''§ 950.501(a)'' in its place.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–2545 Filed 2–6–96; 8:45 am]

BILLING CODE 6325–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (the Board) is amending appendices II and III to its rules at 5 CFR part 1201 to reflect a realignment of the geographical jurisdictions of its regional and field offices, effective immediately, and to announce the closing of its St. Louis Field Office as of April 1, 1996.

EFFECTIVE DATE: February 7, 1996.

FOR FURTHER INFORMATION CONTACT: Darrell L. Netherton, Director of Regional Operations, (202) 653–5805.

SUPPLEMENTARY INFORMATION: The Board is amending appendices II and III to its rules at 5 CFR part 1201 to reflect a realignment of the geographical jurisdictions of its regional and field offices, effective immediately, and to announce the closing of its St. Louis Field Office as of April 1, 1996. This realignment is a continuation of the Board's efforts to streamline its operations and will enable the Board to continue to respond to the needs of its customers while maximizing the use of its financial and human resources.

The realignment results in the following changes:

(1) The San Francisco Regional Office is redesignated the Western Regional Office. The amendment also reflects the new address and facsimile number of this office. The Denver Field Office, previously under the Dallas Regional Office, is realigned with the Western Regional Office. The geographic areas covered by the Western Regional Office and its Denver and Seattle field offices now constitute the Western Region.

(2) The Chicago Regional Office is redesignated the Central Regional Office and gains jurisdiction over the geographic areas formerly under the St. Louis Field Office, except for its jurisdiction in Tennessee as described in item 4 below. The Dallas Regional Office is redesignated as a field office. The geographic areas covered by the Central Regional Office and its Dallas Field Office new constitute the Central Region.

(3) The Philadelphia Regional Office is redesignated the Northeastern Regional Office. The geographic areas covered by the Northeastern Regional Office and its Boston and New York field offices now constitute the Northeastern Region.

(4) The Atlanta Regional Office gains jurisdiction over the area of Tennessee west of the Tennessee River and now has jurisdiction over the entire state of Tennessee. The geographic areas covered by the Atlanta Regional Office now constitute the Atlanta Region.

(5) There is no change to the jurisdiction of the Washington Regional Office. The geographic areas covered by the Washington Regional Office now constitute the Washington Region.

(6) The St. Louis Field Office will close as of April 1, 1996.

Because appeals and related matters must be filed with the regional or field office having geographic jurisdiction, appellants, agencies, and other interested parties should carefully review the amended regional and field office jurisdictions in appendix II to part 1201 and the approved hearing locations in appendix III to part 1201. (The approved hearing locations in appendix III are listed in alphabetical order by state, and alphabetically by city within each state.) For the convenience of its customers, the Board is republishing appendices II and III to part 1201 in their entirety.

Effective as of the date of this notice, all new appeals from the geographic areas formerly covered by the St. Louis Field Office should be filed with the Central Regional Office in Chicago (except those from Tennessee west of the Tennessee River, which should be filed with the Atlanta Regional Office). The St. Louis Field Office will continue to process its pending caseload until the office closes and cases in process are turned over to the Central Regional Office. Parties with cases pending before judges in the St. Louis Field Office should continue to make any required filings and direct any inquiries to the St. Louis Field Office until otherwise advised by the judge assigned to their case.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, and 7701 unless otherwise noted.

Appendices II and III to part 1201 are revised to read as follows:

Appendix II to Part 1201—Appropriate Regional or Field Office for Filing Appeals

All submissions shall be addressed to the Regional Director, if submitted to a regional office, or the Chief Administrative Judge, if submitted to a field office, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by § 1201.4(d) of this part. The facsimile numbers listed below are TDD-capable; however, calls will be answered by voice before being connected to the TDD. Address of Appropriate Regional or Field Office and Area Served:

1. Atlanta Regional Office, 401 West Peachtree Street, N.W., 10th floor, Atlanta, Georgia 30308–3519, Facsimile No.: (404) 730–2767, (Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee).
2. Central Regional Office, 230 South Dearborn Street, 31st floor, Chicago, Illinois 60604–1669, Facsimile No.: (312) 886–4231, (Illinois; Indiana; Iowa; Kansas City, Kansas; Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin).

2a. Dallas Field Office, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242–9979, Facsimile No.: (214) 767–0102, (Arkansas, Louisiana, Oklahoma, and Texas).

3. Northeastern Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2987, Facsimile No.: (215) 597–3456, (Delaware; Maryland—except the counties of Montgomery and Prince George's; New Jersey—except the counties of Bergen, Essex, Hudson, and Union; Pennsylvania; and West Virginia).

3a. Boston Field Office, 99 Summer Street, Suite 1810, Boston, Massachusetts 02110–1200, Facsimile No.: (617) 424–5708, (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).

3b. New York Field Office, 26 Federal Plaza, Room 3137–A, New York, New York 10278–0022, Facsimile No.: (212) 264–1417, (New Jersey—counties of Bergen, Essex, Hudson, and Union; New York; Puerto Rico; and Virgin Islands).

4. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473, Facsimile No.: (703) 756–7112, (Maryland—counties of Montgomery and Prince George's; North Carolina; Virginia; Washington, DC; and all overseas areas not otherwise covered).

5. Western Regional Office, 250 Montgomery Street, Suite 400, 4th floor, San Francisco, California 94104–3401, Facsimile No.: (415) 705–2945, (California and Nevada).

5a. Denver Field Office, 12567 West Cedar Drive, Suite 100, Lakewood, Colorado 80228–2009, Facsimile No.: (303) 969–5109, (Arizona, Colorado, Kansas—except Kansas City, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming).

5b. Seattle Field Office, 915 Second Avenue, Suite 1840, Seattle, Washington 98174–1056, Facsimile No.: (206) 220–7982, (Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas).

Appendix III to Part 1201—Approved Hearing Locations By Regional Office

Atlanta Regional Office

Birmingham, Alabama
Huntsville, Alabama
Mobile, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tallahassee, Florida
Tampa/St. Petersburg, Florida
Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Jackson, Mississippi
Charleston, South Carolina
Columbia, South Carolina
Chattanooga, Tennessee
Knoxville, Tennessee
Memphis, Tennessee
Nashville, Tennessee

Central Regional Office

Chicago, Illinois
Indianapolis, Indiana
Davenport, Iowa/Rock Island, Illinois
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Kansas City, Missouri
Springfield, Missouri
St. Louis, Missouri
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

Dallas Field Office

Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma
Corpus Christi, Texas
Dallas, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas

Northeastern Regional Office

Dover, Delaware
Baltimore, Maryland
Trenton, New Jersey
Harrisburg, Pennsylvania
Philadelphia, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Charleston, West Virginia
Morgantown, West Virginia

Boston Field Office

Hartford, Connecticut
New Haven, Connecticut
Bangor, Maine
Portland, Maine
Boston, Massachusetts
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

New York Field Office

Newark, New Jersey
Albany, New York
Buffalo, New York
New York, New York
Syracuse, New York
San Juan, Puerto Rico

Washington Regional Office

Washington, DC
Asheville, North Carolina
Charlotte, North Carolina
Raleigh, North Carolina
Jacksonville, North Carolina
Bailey's Crossroads, Falls Church, Virginia
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia

Western Regional Office

Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California
San Francisco, California
Santa Barbara, California
Las Vegas, Nevada
Reno, Nevada

Denver Field Office

Phoenix, Arizona
Tucson, Arizona
Denver, Colorado
Grand Junction, Colorado
Pueblo, Colorado
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Albuquerque, New Mexico
Bismarck, North Dakota
Fargo, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

Seattle Field Office

Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
Medford, Oregon
Portland, Oregon
Seattle, Washington
Spokane, Washington
Richland, Kennewick, and Pasco, Washington

Dated: February 2, 1996.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 96–2620 Filed 2–6–96; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AGL–9]

Realignment of Jet Route J–588

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Jet Route J–588 between the state of Michigan and Canada. This action is necessary because the Stirling, ON, Canada, Very High Frequency Omnidirectional Range (VOR) has been decommissioned. Altering J–588 will ensure continuity for aircraft transitioning along that jet route to and from the United States and Canada.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Jet Route J–588 from the Sault Ste Marie, MI, VOR to the Stirling, ON, Canada, VOR (60 FR 52133). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters Jet Route J–588 from the Sault Ste Marie, MI, VOR to the Stirling, ON, Canada, VOR. The Stirling VOR was decommissioned in July 1995. To ensure that continuity exists along J–588 for aircraft transitioning to and from the United States and Canada, the jet route will be realigned with the Campbellford, ON, Canada, VOR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–588 [Revised]

From Sault Ste Marie, MI; to Campbellford, ON, Canada. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on January 30, 1996.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 96–2631 Filed 2–6–96; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5416–7]

Air Quality; Revision to Definition of Volatile Organic Compounds—Exclusion of Perchloroethylene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act) and for the Federal implementation plan (FIP) for the Chicago ozone nonattainment area. This action adds perchloroethylene (perc), also known as tetrachloroethylene, to the list of compounds excluded from the definition of VOC on the basis that it has negligible photochemical reactivity. Perc is a solvent commonly used in dry cleaning, maskant operations, and degreasing operations. This rule results in more accurate assessment of ozone formation potential and will assist States in avoiding exceedances for the ozone health standard. The rule does this by causing control efforts to focus on compounds which are actual ozone precursors, rather than giving credit for control of a compound which has negligible photochemical reactivity.

Perc will continue to be regulated as a hazardous air pollutant under section 112 of the Clean Air Act. EPA has already issued regulations limiting emissions of perc from dry cleaning and halogenated solvent cleaning and as a feedstock in the organic chemical manufacturing industry.

EFFECTIVE DATE: This rule is effective March 8, 1996.

ADDRESSES: Pursuant to section 307(d)(1) (B), (J), and (U) of the Act, 42 U.S.C. section 7607(d)(1) (B), (J), and (U), this action is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, A–92–09, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245.

SUPPLEMENTARY INFORMATION:

I. Background

On July 8, 1977, EPA published a recommended policy on control of VOC (42 FR 3513) which discussed the photochemical reactivity of organic compounds and their role in the formation of tropospheric ozone. This policy statement identified several compounds that are considered to be of negligible photochemical reactivity and which are not required to be controlled in order to prevent the formation of tropospheric ozone. The policy was subsequently amended on June 4, 1979 (44 FR 32042), May 16, 1980 (45 FR 32424), July 22, 1980 (45 FR 48941), January 18, 1989 (54 FR 1988), and March 18, 1991 (56 FR 11418) to add compounds to those already recognized by EPA as having negligible photochemical reactivity.

On October 24, 1983, EPA proposed to add perc to the list of negligibly-reactive compounds which would be exempt from regulation under SIP's to attain the NAAQS for ozone. This proposal was based upon a laboratory testing program that investigated perc's role in the tropospheric ozone problem. The study concluded that perc contributes less to the ambient ozone problem than equal concentrations of ethane (one of the negligibly-reactive organic compounds previously exempted from ozone SIP controls). The details of this investigation are contained in the EPA report, ''Photochemical Reactivity of Perchloroethylene,'' EPA–600/3–83–001, January 1983. A copy has been placed in the docket (A–92–09) for today's action.

In the October 24, 1983 proposal, comments were solicited on the proposed action. The EPA received 20 comments on the proposal. None of the commenters questioned the technical judgment that perc is negligibly reactive and has an insignificant impact on ozone formation. However, there was quite a divergence of opinion as to the action EPA should take in response to the new findings on the reactivity of perc, many of which related to concerns about perc as a toxic air pollutant. Because of these concerns, EPA determined at that time to take no final action on the proposal.

Subsequently, the Act as amended listed perc as a hazardous air pollutant (HAP) under section 112(b). Pursuant to section 112(d), EPA has issued national emission standards for hazardous air pollutants (NESHAP) for two major perc source categories: perc dry cleaning, September 22, 1993 (58 FR 49354), and halogenated solvent cleaning, December 2, 1994 (59 FR 61801). Additional releases which may result from perc production or use as a feedstock are addressed by the NESHAP for the hazardous organics (chemicals) industry promulgated April 22, 1994 (59 FR 19402). These two applications, together with the use of perc as feedstock in chemical production, account for 90% of current perc production. Pursuant to section 112(e) of the amended Act, the EPA will be issuing hazardous pollutant emissions standards for various other categories including several other perc sources through November 15, 2000. On January 28, 1992, the Halogenated Solvents Industry Alliance (HSIA) petitioned EPA to exempt perc from regulation as an ozone precursor under the Act. This request was based on HSIA's contention that perc is negligibly photochemically reactive and does not contribute to tropospheric ozone formation. The HSIA identified, as the technical basis for its contention that perc is negligibly reactive, the October 24, 1983 proposal (48 FR 49097) by EPA to amend its ''Recommended Policy on Control of Organic Compounds'' to exempt perc from regulation on the basis of its negligible photochemical reactivity.

On February 3, 1992 (57 FR 3941), pursuant to a proposed rule issued March 18, 1991 (56 FR 11418), EPA promulgated a general definition of VOC (40 CFR 51.100(s)) as part of EPA's regulations governing the development of SIP's. That action also incorporated the VOC definition into various SIP-related rules, including EPA's new source review rules and the FIP rules for the Chicago area. This 1992 regulatory definition superseded the July 8, 1977 policy statement as well as the subsequent revisions to that policy. In accordance with the policy on which it was based, the regulatory definition excludes a number of organic compounds from the definition of VOC on the basis that they are negligibly photochemically reactive and therefore contribute negligibly to tropospheric ozone formation. This list of negligibly-reactive compounds contained the compounds originally identified in the 1977 policy statement plus other compounds that have been recognized by EPA subsequent to the 1977 policy statement as having negligible photochemical reactivity. Further, EPA has revised this definition twice through rulemaking (59 FR 50693 and 60 FR

31633). Perc was not included in the list of negligibly photochemically reactive compounds in this definition.

On October 26, 1992, EPA proposed to revise its definition of VOC (40 CFR 51.100(s)) by adding perc to the list of compounds that are regarded as negligibly photochemically reactive. Final action based on that October 26, 1992 proposal is being taken today.

II. Comments on Proposal and EPA Responses

In accordance with section 307(d) of the Act, as amended in 1990, today's action is accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period. Eight commenters (a labor union, an environmental organization, a municipal government, two trade associations, and three manufacturing companies) submitted written comments in response to EPA's October 26, 1992 proposal. Most of the comments support the proposed action. Copies of these comments are located in the docket (A–92–09) for this action. Significant comments and EPA's responses are summarized below. Finally, in the proposal for today's action, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (see section 307(d)(5)(ii) of the Act). The EPA did not receive any such requests for a public hearing and, therefore, did not hold one.

Comment: Two commenters suggested that the proposal should be delayed or withdrawn until it has been established that the public health is adequately protected by controls on emissions of perc from all sources. This concern is brought about, in part, by the fact that perc is listed as a HAP in section 112 of the Act. These commenters refer to the toxicity hazard of the compound and to the possibility that it may be a human carcinogen. One of these commenters stated that there are sources of perc, other than dry cleaning, for which EPA has not yet proposed NESHAP which would define the maximum available control technology level of control for the source. Such sources include degreasing, use in paints and architectural coatings, adhesives, use for maskants in the aerospace industry, and miscellaneous uses in the manufacture of aerosol spray paints and cleaners, pharmaceuticals, textiles, printing inks, and dielectric fluids for power transformers. These sources will not be controlled as VOC sources if perc is excluded from the definition of VOC.(Note—The NESHAP for halogenated solvent cleaning had not yet been promulgated when this comment was submitted.)

Response: The EPA's purpose in promulgation of the general definition of VOC (40 CFR 51.100(s)) is for use in the preparation of SIP's designed to achieve and maintain the NAAQS for ozone. That definition of VOC lists several compounds which are considered to have negligible photochemical reactivity and, therefore, are exempt from the VOC definition. Based on the criteria used to judge the reactivity of compounds for this list, EPA has determined that perc should be added to the list of compounds as not contributing substantially to the formation of ground level ozone. Further, EPA believes that based on perc's non-reactivity it is inappropriate to allow States to continue to take credit for perc reductions in ozone non-attainment planning.

Compounds that are defined as being HAP are required to be controlled under section 112 of the Act which calls for EPA to develop a NESHAP for sources of the listed compounds. Perc is listed as a HAP in section 112 of the Act. The EPA believes that the control of HAP, including perc, under section 112 of the Act is the proper approach to controlling these emissions. EPA shares the concerns regarding perc's toxicity. Acute and chronic inhalation exposure to perc results in central nervous system effects. Further, EPA's science advisory board (SAB) has advised the Agency that perc should be classified as a carcinogen; the SAB found that the scientific evidence of carcinogenicity falls on the continuum between ''B2'' probable and a ''C'' possible. For these reasons EPA believes that regulation under section 112 of the Clean Air Act is appropriate. As noted previously, EPA already has taken steps to regulate the great majority of perc emissions and plans to issue further regulations for the remaining major sources which release perc to the atmosphere. Further, EPA has the authority to regulate additional source categories—if EPA identifies any such sources. EPA today reaffirms its intention to ensure that adequate public health protection from perc emissions is provided through these programs.

Today's action improves our ability to provide public health protection from the effects of ground level ozone. The rule does this by causing control efforts to focus on compounds which are actual ozone precursors, rather than giving credit for control of a compound which has negligible photochemical reactivity. And since the Agency already has made substantial progress in issuing necessary NESHAPs, EPA does not agree that the proposal to add perc to the negligibly reactive list in the definition of VOC should be delayed until all evaluations of perc emissions under section 112 of the Act are complete. Further, representatives of trade associations for manufacturers and end-users of perchloroethylene have stated that they believe that perchloroethylene consumption in consumer products and related products (and therefore associated emissions) will not increase dramatically as a result of this action. We have received commitments from industry associations to survey or otherwise track how consumption of perchloroethylene in these kinds of products changes. Should EPA become aware of significant increases in perchloroethylene emissions or in public exposure from such sources, EPA will then consider appropriate regulatory action.

Comment: One commenter noted that exempting perc as a VOC would mean that the control techniques guideline (CTG) for perc dry cleaning (''Control of Volatile Organics Emissions from Perchloroethylene Dry Cleaning Systems''; EPA 450/2–78–050, December 1978) would no longer apply. In addition, the proposed NESHAP for the dry cleaning industry (56 FR 64382, December 9, 1991) would exempt many small sources that the CTG covers. Therefore, the public will have greater exposure to a suspected carcinogen than if perc continues to be controlled as a VOC for purposes of meeting reasonably available control technology. (Note—Since these comments were received, the dry cleaning NESHAP has been promulgated.)

Response: EPA is confident that the recently promulgated NESHAP increases public health protection above levels achieved by the formerly applicable CTG. It is true that the NESHAP for dry cleaning exempts small-sized dry cleaners from additional control requirements for process emissions, albeit fewer small sources than initially proposed. The decision to limit requirements on these smallest sources was made based on deliberations considering the extreme impacts of the control costs on these very small sources. All sources must now comply with pollution prevention requirements such as leak detection and repair. EPA further notes that the control requirements for most sources are considerably more stringent under the recent NESHAP than under the CTG. The NESHAP results in nationwide decreases in perc emissions of 32,400 Mg (35,700 T) each year beyond controls existing due to the CTG or other State rules.

Comment: One commenter cited as unfair the section of the proposed rule change that would prohibit the use of perc emission reduction credits (ERC) which were achieved prior to the proposed revision as VOC offsets or in netting transactions. The commenter asserted that such a prohibition would have a negative financial impact on companies that spent money in good faith to reduce perc emissions and to bank emissions credits prior to the rule change. A second commenter suggested that treating perc as a VOC may interfere with attainment of the ozone NAAQS. This second commenter attached a January 8, 1992 letter from the San Diego Air Pollution Control District to EPA which took a critical view of having to issue ERC for substantial reductions in emissions of perc. This letter said:

> Under the existing VOC definition, these ERC's may now be used to offset emission increases from the new sources of VOC whose photochemical reactivity is not negligible, resulting in a net increase in ozone precursors. The use of perchloroethylene ERC's as offsets exacerbates the District's severe ozone nonattainment problem since the emission increase in reactive compounds would not be truly offset.

Response: The EPA is deferring its decision concerning whether credits for perc, which were banked prior to today's action, may be used in future netting, offsetting or trading transactions with reactive VOC. Because of the potential impact that banked emissions could have on attainment demonstrations and reasonable further progress showings, EPA needs to conduct further discussions with States on this issue.

Comment: One commenter supported the withdrawal of the appropriate CTG's simultaneously with any final rulemaking.

Response: There are two CTG's which refer to perc, the solvent metal cleaning CTG and the perc dry cleaning CTG (''Control of Volatile Organic Emissions from Solvent Metal Cleaning,'' EPA–450/2–77–022, November 1977, and ''Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems,'' EPA–450/2–78–050, December 1978). The solvent metal cleaning CTG discusses a number of other solvents in addition to perc, and the technology discussed in this CTG would often apply to any of several solvents that are used for degreasing. The perc dry cleaning CTG is aimed specifically at controlling perc.

Today's action in promulgating this final rule means that, for purposes of ozone control, the perc dry cleaning CTG no longer has the legal status of a CTG. The solvent metal cleaning CTG is no longer considered to be a CTG for controlling perc emissions. However, the solvent metal cleaning CTG is still applicable as a CTG in regards to all other solvents which are VOC. Although these two documents are no longer regarded as CTG's as related to perc, they remain effective as technical guidance documents; States may still use the documents as sources of technical information when developing rules to control toxic materials.

III. Final Action

Today's final action is based upon the material in Docket No. A–92–09 and EPA's review and consideration of all comments received during the public comment period. As provided in EPA's October 26, 1992 proposal and as modified in response to comments described above, EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to exclude perchloroethylene (also known as tetrachloroethylene) as a VOC for ozone SIP purposes. The revised definition will also apply in the Chicago ozone nonattainment area pursuant to the 40 CFR 52.741(a)(3) definition of volatile organic material or volatile organic compounds. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, after the effective date of this final action, EPA will not enforce measures controlling perc as part of a federally-approved ozone SIP. In addition, after the effective date of this final action, States may not take credit for controlling perc in their ozone control strategies.

Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. The EPA has determined that this rule is not ''significant'' under the terms of Executive Order 12866 and is, therefore, not subject to Office of Management and Budget (OMB) review. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local and/or tribal government(s) in the aggregate. Since today's action is deregulatory in nature and does not impose any mandate upon any source, the cost of such mandates will not result in estimated annual costs of $100 million or more.

Assuming this rulemaking is subject to section 317 of the Act, the Administrator concludes, weighing the Agency's limited resources and other duties, that it is not practicable to conduct an extensive economic impact assessment of today's action since this rule will relax current regulatory requirements. Accordingly, the Administrator simply notes that any costs of complying with today's action, any inflationary or recessionary effects of the regulation, and any impact on the competitive standing of small businesses, on consumer costs, or on energy use, will be less than or at least not more than the impact that existed before today's action.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 26, 1996.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.100 is amended by revising paragraph (s)(1) introductory text to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12);

chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC–142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:

* * * * *

[FR Doc. 96–2495 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300398A; FRL–4987–6]

RIN 2070–AB78

Styrene-2-Ethylhexyl Acrylate-Glycidyl Methacrylate-2-Acrylamido-2-Methylpropanesulfonic Acid Graft Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of styrene-2-ethylhexyl acrylate-glycidyl methacrylate-2-acrylamido-2-methylpropanesulfonic acid graft copolymer when used as an inert ingredient (dispersing agent/solvent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Dow Chemical Co. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective February 7, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300398A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP-300398A] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8811; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of October 25, 1995 (60 FR 54643), which announced that Dow Chemical Co., 1803 Building, Midland, MI 48674-1803, had submitted pesticide petition (PP) 5E04461 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), amend 40 CFR 180.1001(c) by exempting styrene-2-ethylhexyl acrylate-glycidyl methacrylate-2-acrylamido-2-methylpropanesulfonic acid graft copolymer when used as an inert ingredient (dispersing agent/solvent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, under 40 CFR 180.1001(c). The inert ingredient meets the definition of a polymer under 40 CFR 723.250(b) and the criteria listed in 40 CFR 723.250(e) that define a chemical substance that poses no unreasonable risk under section 5 of the Toxic Substance Control Act (TSCA).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohol and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceouse earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, tolerance exemption is established as set forth below.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve

one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [OPP-300398A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 29, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Styrene-2-ethylhexyl acrylate-glycidyl methacrylate-2-acrylamido-2-methylpropanesulfonic acid graft co-polymer, minimum number-average molecular weight 12,500.	.....	Dispersing agent/solvent.
* *	* * *	* *

* * * * *

[FR Doc. 96–2626 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2F4072/R2188; FRL–4986–7]

Metalaxyl; Pesticide Tolerances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects a pesticide tolerance for metalaxyl in or on mustard greens that was set forth in a final rule in the Federal Register of November 15, 1995.

EFFECTIVE DATE: February 7, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In FR Doc. 95-28068 in the Federal Register of November 15, 1995, at page 57364, a parts-per-million tolerance for mustard greens appeared as 2.0 ppm in the table, although the preamble to the document had made clear that the tolerance to be established is 5.0 ppm. This document corrects the entry for mustard greens in the table to 40 CFR 180.408(a) by changing the parts-per-million entry from 2.0 ppm to 5.0 ppm.

Authority: 21 U.S.C. 346a and 348.

Dated: January 27, 1996

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–2624 Filed 2–6–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4419/R2179; FRL–4981–6]

RIN 2070–AB78

Avermectin B_1 and its Delta-8,9-Isomer; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities dried hops and cattle fat. The regulation to establish maximum permissible levels for residues of the insecticide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4). The time-limited tolerances for dried hops and cattle expire on April 30, 1996.

EFFECTIVE DATE: This regulation becomes effective February 7, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4419/R2179], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4E4419/R2179]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 13, 1995 (60 FR 47529), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 4E4419 to EPA on behalf of the Idaho, Oregon, and Washington Hop Commissions and the Hop Growers of America. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.449 by establishing time-limited tolerances for the combined residues of the insecticide avermectin B_1 [a mixture of avermectins containing greater than or equal to 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and less than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] and its delta-8,9-isomer in or on the raw agricultural commodities dried hops at 0.5 part per million (ppm) and cattle fat at 0.015 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

EPA is also revising the introductory text of § 180.449(a) to correctly set forth the chemical expression for avermectin B_1 in the paragraph. The chemical was incorrectly expressed in an amendment in the Federal Register of September 30, 1994 (59 FR 49826). This is a nonsubstantive change that merely is a restatement of a chemical expression.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4E4419/R2179] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4E4419/R2179], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 26, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.449, by revising paragraph (a) and by amending paragraph (b) by revising the introductory text, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) Tolerances, to expire on April 30, 1996, are established for the insecticide avermectin B_1 [a mixture of avermectins containing greater than or equal to 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and less than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] and its delta-8,9-isomer in or on the following commodities:

Commodity	Parts per million	Expiration date
Cattle, fat	0.015	April 30, 1996
Cattle, meat	0.02	Do.
Cattle, mbyp	0.02	Do.
Citrus, whole fruit	0.02	Do.
Cottonseed	0.005	Do.
Hops, dried	0.5	Do.
Milk	0.005	Do.

(b) A tolerance is established for the combined residues of the the insecticide avermectin B_1 [a mixture of avermectins containing greater than or equal to 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and less than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] and its delta-8,9-isomer in or on the following commodities:

* * * * *

[FR Doc. 96–2622 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 020196A]

Groundfish of the Gulf of Alaska; Pollock in Statistical Area 63

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting the directed fishery for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the first quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 2, 1996, until 12 noon, A.l.t., June 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The first quarterly allowance of pollock TAC in Statistical Area 63 is 3,420 metric tons (mt) (1996 GOA Final Specifications published February 5, 1996), determined in accordance with § 672.20(a)(2)(iv). The directed fishery for pollock in Statistical Area 63 of the GOA was closed under § 672.20(c)(2)(ii) on January 23, 1996 (61 FR 2457, January 26, 1996) and reopened on January 29, 1996 (61 FR 3606, February 1, 1996). The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the first quarterly allowance of pollock TAC in Statistical Area 63 soon will be reached. Therefore, the Regional Director has established a

directed fishing allowance of 3,220 mt after determining that 200 mt will be taken as incidental catch in directed fishing for other species in Statistical Area 63 in the GOA. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 63.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 1, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–2568 Filed 2–1–96; 4:53 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 26
Wednesday, February 7, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM96–6–000]

Inquiry Concerning Commission's Merger Policy Under the Federal Power Act

January 31, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission requests comments on whether it should revise its criteria and policies for evaluating public utility mergers in light of fundamental changes in the electric industry and the regulation of that industry.

DATES: Written comments of no more than 50 pages, double-spaced, must be received no later than May 7, 1996.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 208–0921.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3720 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS indefinitely in ASCII and Wordperfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street NE., Washington, DC 20426.

I. Background

The Federal Energy Regulatory Commission (Commission) requests comments on whether its criteria and policies for evaluating mergers of public utilities need to be revised in light of fundamental changes in the electric industry and the regulation of that industry.

Under section 203 of the Federal Power Act (FPA),[1] no public utility may dispose of, merge, or consolidate certain facilities under the Commission's jurisdiction without the Commission's approval.[2] The Commission is to approve a merger if the merger is ''consistent with the public interest.''

The Commission presently analyzes proposed mergers by examining six non-exclusive factors that were set forth in *Commonwealth Edison Company*.[3] These factors are:

(1) the effect on the applicants' operating costs and rate levels;

(2) the contemplated accounting treatment;

(3) the reasonableness of the purchase price;

(4) whether the acquiring utility has coerced the to-be-acquired utility into acceptance of the merger;

(5) the effect on competition; and

(6) the impact on the effectiveness of state and Federal regulation.

Of these factors, the effects on costs and rates, and on competition, have been the most significant issues presented in recent merger cases.

We have used the *Commonwealth* factors for almost thirty years. However, the industry and our regulation of it have changed significantly during that time, and even greater changes are likely in the future. As we explained in detail in our proposed Open Access rule,[4] a variety of factors has created considerable competition in the generation market and structural changes in the industry itself. For instance, the advent of various non-traditional generating entities and the greater availability of transmission (brought about by the Energy Policy Act of 1992[5] and by certain utilities' ''open access'' filings) have allowed a great deal of competition, particularly in the market for new generation. Since the Open Access NOPR was issued, there have been further competitive changes. For example, thirty-one public utilities have filed transmission tariffs that provide varying degrees of open access; certain power pools have discussed adopting Independent System Operators (ISOs) or other structural changes;[6] and the California Public Utilities Commission has issued an order directing restructuring of the electric industry in California to include a spot market power exchange, an ISO and retail access, among other things.[7] With the final Open Access rule, non-discriminatory wholesale open access will be available on an even wider basis. This, in turn, will further increase competition.

In light of these fundamental changes, the Commission solicits comments on whether our criteria and policies for evaluating mergers need to be changed. We note that several entities commenting on the Open Access proposal argued that the policy needs to be updated. In general, these commenters are concerned that mergers may create ''mega-utilities'' that will have market power in generation, particularly if these utilities are able to

[1] 16 U.S.C. § 824b.

[2] In this order, we will refer to all such transactions as mergers.

[3] 36 FPC 927 (1996), *aff'd sub nom. Utility Users League* v. *FPC*, 394 F.2d 16 (7th Cir. 1968), *cert. denied*, 393 U.S. 953 (1968).

[4] Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities, 60 FR 17662 at 17668–17675 (April 7, 1995), IV FERC Stats. & Regs., Proposed Regulations ¶ 32,514 at 33,057–33,069 (1995).

[5] 16 U.S.C. §§ 824j–824l.

[6] Transcript of Commission's Conference on Power Pools Under the Open Access Proposal, vol. 1, pages 75 *et seq.* (New York Power Pool); 78 *et seq.* (New England Power Pool); 82 *et seq.* (Pennsylvania-New Jersey-Maryland Power Pool) (Dec. 5, 1995).

[7] D.95–12–063 (Dec. 20, 1995), *as modified by* D.96–01–009 (Jan. 10, 1996).

avoid the pancaked transmission rates that their competitors have to pay.[8]

II. Public Comment Procedures

The Commission invites all interested parties to submit an original and 14 copies of their comments. Comments should not exceed 50 pages, double-spaced, and should include an executive summary. Commenters should briefly describe themselves and should refer to Docket No. RM96–6–000. They should submit a copy of their comments on a 3½ inch diskette in ASCII II format. Comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, no later than May 7, 1996. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Section, 888 First Street NE., Washington, DC 20426, during regular business hours.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2548 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–P

[8] *E.g.*, American Public Power Association initial comments at 4, reply comments at 9–10; National Rural Electric Cooperative Association initial comments at 20–21; National Independent Power Producers reply comments at 5–6; Indiana Utility Regulatory Commission initial comments at 36–7.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1220

[Docket No. 96N–0011]

Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing how it intends to implement the Tea Importation Act (the Act) in the wake of the agency's appropriation for fiscal year (FY) 1996, which provides that none of the funds appropriated may be used to operate the Board of Tea Experts (the board). Without a board to provide recommendations for standards of purity, quality, and fitness for consumption of imported teas, FDA has decided to solicit public recommendations for the tea standards that will be effective beginning May 1, 1996. In addition, FDA requests comments on the appropriateness of this approach to setting such standards.

DATES: Written comments and other material considered relevant, including samples that the agency may use as standards, by April 8, 1996. FDA proposes that any final standards that are adopted in this proceeding will be effective on May 1, 1996.

ADDRESSES: Submit written comments and any tea samples to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: Section 3 of the Act (21 U.S.C. 43) states:

> The Secretary of [Health and Human Services], upon the recommendation of the board of experts provided in section 2 of this title, shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of tea imported into the United States, and shall procure and deposit in the customhouses of the ports of New York, Chicago, San Francisco, and such other ports as he may determine, duplicate samples of such standards.

Under the Act and the regulations that FDA has adopted to implement it, FDA sets such standards annually (see 21 U.S.C. 42 and 21 CFR 1220.40). No tea that is inferior in purity, quality, or fitness for consumption to the standard established by FDA may be brought into this country (21 U.S.C. 41).

Public Law 104–37, which contains FDA's appropriation for FY 1996, states that: ''None of the funds appropriated or made available to the Food and Drug Administration in this Act shall be used to operate the Board of Tea Experts.'' This provision creates a significant problem for the agency since members of the board cannot be appointed, nor its activities supported by FDA. Nonetheless the Act remains in effect. Thus, FDA has a continuing obligation to implement it. This obligation is underscored by the fact that Congress rejected a broader limitation on the agency's ability to expend funds to implement the Act that appeared in the version of the appropriations bill that passed the Senate (see H. Rept. 104–268, 104th Cong., 1st sess. 38 (1995)). However, without the benefit of the advice of the board, the agency is faced with the question of how it will arrive at the standards required under the Act for imported teas.

In considering this question, FDA identified three options. First, it could do nothing to implement the Act. The agency rejected this option because it would be inconsistent with the apparent intent of Congress, and because it would mean that it would ostensibly be unlawful to bring or import into the United States any merchandise identified as tea. Even though the agency could, as an exercise of its enforcement discretion, do nothing about the latter fact, FDA considers it unfair and unwise to allow such a situation to emerge. Thus, the agency considers it incumbent on itself to continue to implement the Act in a manner that is consistent with law.

The second option that the agency identified was to ask the Department of Health and Human Services, of which FDA is a part, to operate the board with funds not appropriated in Pub. L. 104–37. The agency rejected this option because it is not consistent with the spirit of Congress's action, and because the Department is likely to have little ability to assume this financial and resource obligation.

The third option that FDA considered was to substitute public input for the recommendations of the board. This option is not inconsistent with the law. The requirement in 21 U.S.C. 43 is that the Secretary (and, by delegation, FDA) fix and establish standards for teas. While the law provides that the board is to provide recommendations to FDA, there is nothing in the Act that says that the agency can only establish such standards based on the board's recommendations. Thus, the agency is not precluded from relying on other sources of information. The agency considers it likely that the information that it receives in response to a request for comments will allow it to set appropriate standards for tea. Moreover, once the agency sets such standards, tea can continue to come into this country lawfully, limited only by the standards that FDA sets.

Based on these considerations, FDA is seeking public comment on the standards of purity, quality, and fitness for consumption of tea that it is to set under 21 U.S.C. 43 for the year beginning on May 1, 1996. FDA requests that interested persons submit all material that they consider relevant, including samples that the agency may use as standards. FDA will evaluate the information that it receives, and, based on that evaluation, it intends to arrive at the standards that will apply to tea shipped from abroad after May 1, 1996, until April 30, 1997.

In addition to comments on what the standards should be, FDA solicits comment on the process that it has instituted. FDA solicits comments on its

tentative view that this course of action is consistent with both the Act and Pub. L. 104–37. Any comments that disagree should set forth the basis for the view. The agency also solicits comments on whether there are any other options that the agency can follow that are preferable to the one that it has tentatively decided to pursue and yet that are still consistent with the two laws in question.

Dependent on the comments, information, and other material (including tea samples) submitted in response to this proposal, FDA is hopeful of being able to proceed directly to a final rule that establishes the applicable tea standards.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''economically significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered ''significant'' under Executive Order 12866 if it raises novel legal or policy issues. The Regulatory Flexibility Act requires Federal agencies to minimize the economic impact of their regulations on small businesses.

FDA finds that this proposed rule is neither an economically significant nor significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, FDA certifies that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small businesses.

Under the current standard setting procedure, the public provides relevant information and material, such as tea samples, to the board, which then makes recommendations to FDA. Based on these recommendations, FDA sets tea standards for that year. Under the proposed system, the public may send information and material directly to FDA, which will set tea standards for that year without the recommendations of the board. This change in the standard setting process is not expected to lead to any additional compliance costs.

The primary benefit of the proposed method of setting tea standards is that it allows those standards to be set in the absence of recommendations by the board. FDA is required to set tea standards under Section 43 of the Act (21 U.S.C. 43).

FDA requests comments on the economic consequences of the proposed method of setting tea standards, the various ways in which tea samples and other information submitted to FDA may best be used to set tea standards, and on means by which the costs of the proposed standard setting process may be minimized and the benefits maximized.

Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, labeling, or other third party disclosure requirements; thus, there is no ''information collection'' necessitating clearance by the Office of Management and Budget.

Interested persons may, on or before April 8, 1996, submit to the Dockets Management Branch (address above) written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA believes that 60 days is an appropriate amount of time for meaningful comments to be submitted and for the agency to meet its statutory obligation to establish new standards for imported tea by May 1, 1996.

Dated: January 31, 1996.

William K. Hubbard,

Associate Commisioner for Policy Coordination.

[FR Doc. 96–2595 Filed 2–2–96; 10:52 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA034–4014, PA035–4015; FRL–5418–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Maintenance Plan for the Pittsburgh Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a redesignation request for the Pittsburgh ozone nonattainment area and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision consists of a maintenance plan for the Pittsburgh ozone nonattainment area. The intended effect of this action is to propose disapproval of the redesignation request and its associated maintenance plan because the area violated the National Ambient Air Quality Standard for ozone (the ozone NAAQS) and is not eligible for redesignation. This action is being taken under sections 107 and 110 of the Clean Air Act.

DATES: Comments must be received on or before March 8, 1996.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337, at the EPA Region III office, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the Commonwealth of Pennsylvania formally submitted a redesignation request for the Pittsburgh ozone nonattainment area. At the same time, the Commonwealth submitted a maintenance plan for the Pittsburgh area as a SIP revision. The maintenance plan

was subsequently amended on January 13, 1994 and, again, on May 12, 1995. During the 1995 ozone season, the Pittsburgh area violated the ozone NAAQS, making the area ineligible for redesignation. Therefore, EPA is proposing to disapprove the redesignation request and its associated maintenance plan.

Background

Under section 107(d)(3)(E) of the Clean Air Act (the Act), the following five criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS.
2. The area must meet applicable requirements of section 110 and Part D.
3. The area must have a fully approved SIP under section 110(k) of the Act.
4. The area must show that its experienced improvement in air equality is due to permanent and enforceable measures.
5. The area must have a fully approved maintenance plan under section 175A of the Act, including contingency measure.

The NAAQS for ozone is structured in terms of expected exceedances. An exceedance is said to occur when a monitoring site records a measurement above the ozone standard, 0.12 parts per million (ppm). In order for a monitoring site to meet the NAAQS, the average expected number of exceedances at the site must be less than or equal to one per year in a three-year period (i.e. three or less expected exceedances in a three-year period). An area is considered to be meeting the NAAQS if all locations in that area meet the NAAQS. If one monitor in an area does not meet the NAAQS, the entire area is designated nonattainment.

The Pittsburgh-Beaver Valley area (Pittsburgh area), which includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties, is designated nonattainment for ozone and is classified as moderate (56 FR 56694). Monitored air quality data recorded in the Pittsburgh area met the ozone NAAQS from 1990–1992 and continued to meet the NAAQS through 1994. The Commonwealth of Pennsylvania submitted an ozone maintenance SIP and redesignation request on November 12, 1993, and subsequently amended the maintenance plan on January 13, 1994 and May 12, 1995.

EPA Evaluation

During the 1995 ozone season, ambient air quality monitors in the Pittsburgh area recorded 17 exceedances of the ozone standard. Two monitors in the Pittsburgh area recorded violations of the ozone NAAQS (i.e. four or more exceedances of the ozone standard). One monitor recorded seven exceedances. Another monitor recorded four. The air quality data has been quality assured in accordance with established procedures. Thus, the Pittsburgh area no longer meets the first criteria for redesignation, its air quality monitoring data does not meet the ozone NAAQS. Therefore, the area is not eligible for redesignation.

The maintenance plan SIP revision's demonstration of maintenance of the ozone NAAQS is based on a level of ozone precursor emissions thought to be able to provide maintenance of the NAAQS. The violations of the ozone NAAQS that occurred in 1995 show that the underlying basis for the plan's maintenance demonstration is no longer valid. Therefore, the maintenance plan is not approvable.

A more detailed evaluation of Pennsylvania's redesignation request and maintenance plan for the Pittsburgh area can be found in the Technical Support Document (TSD) prepared by EPA for this rulemaking action. The TSD and other materials related to this action are available for public inspection at the EPA Regional office listed in the **ADDRESSES** section of this document.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

Because the Pittsburgh area is not eligible for redesignation, EPA is proposing to disapprove Pennsylvania's request for redesignation of the Pittsburgh area and the accompanying maintenance plan, which was originally submitted on November 12, 1993, and amended on January 13, 1994 and May 12, 1995.

Upon final disapproval of the maintenance plan, the Pittsburgh area will no longer be able to demonstrate conformity to the submitted maintenance plan pursuant to the transportation conformity requirements in 40 CFR Part 51, § 51.448(i). Since the submitted maintenance plan budget will no longer apply for transportation conformity purposes, the build/no-build and less-than-90 tests will apply.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's denial of the state's redesignation request under section 107(d)(3)(E) of the Act does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and will continue to be subject to the same statutory requirements. To the extent that the area must adopt regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. Therefore, I certify that the disapproval of the redesignation request will not affect a substantial number of small entities.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Regional Administrator's decision to approve or disapprove Pennsylvania's redesignation request for the Pittsburgh ozone nonattainment area and the associated maintenance plan will be based on whether they meet the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 22, 1996.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 96–2717 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 89, 90, and 91

[FRL–5412–3]

RIN 2060–AE54

Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines; Exemptions for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts and New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking; proposed revisions.

SUMMARY: Pursuant to section 213(a)(3) of the Clean Air Act as amended, EPA published a Notice of Proposed Rulemaking (NPRM) on November 9, 1994 (59 FR 55930) for emission standards for new gasoline spark-ignition and diesel compression-ignition marine engines. EPA believes that the proposed standards will help nonattainment areas come into compliance with the ozone National Ambient Air Quality Standards.

The Agency is now publishing this Supplemental Notice of Proposed Rulemaking (SNPRM) because EPA wishes to refine its proposals regarding compliance programs, and because EPA wishes to address some of the comments received on the NPRM. Many of the provisions of this SNPRM seek to minimize regulatory burdens proposed in the NPRM without reducing environmental benefits. The proposals include, for example, modified compliance requirements for small manufacturers and manufacturers of sterndrive/inboard engines or old technology two-stroke outboard/personal watercraft engines. Also, this Notice proposes an in-use averaging, banking, and trading program, and addresses comments regarding consistency with the regulations on land-based nonroad compression-ignition engines rated at or above 37 kilowatts (kW). The Agency is proposing adjustments to the form of the proposed standards for gasoline spark-ignition marine engines, and is proposing changes to the level of the standards for sterndrive and inboard engines. Finally, this Notice proposes to revise the criteria for a national security exemption in the regulations regarding marine engines, land-based nonroad compression-ignition engines (≥37kW), and land-based nonroad spark-ignition engines (≤19kW).

DATES: The comment period for this rulemaking will reopen on February 7, 1996, for purposes of taking comment on issues raised in this SNPRM and will remain open until March 8, 1996, or 30 days after the date of a public hearing, if one is held.

The Agency will hold a public hearing regarding the content of this SNPRM on February 22, 1996, if it receives the request to testify at a hearing by February 20, 1996. The Agency will cancel this hearing if no one requests to testify. Members of the public should call the contact persons indicated below to notify EPA of their interest in testifying at the hearing; they may call the contact persons after February 20, 1996, to determine whether the hearing will be held.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) for EPA consideration by addressing them as follows: EPA Air Docket (LE–131), Attention: Docket Number A–92–28, room M–1500, 401 M Street, SW., Washington, D.C. 20460.

The public hearing will be held at the National Vehicle and Fuel Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, at 9 a.m.

Materials relevant to this rulemaking are contained in this docket and may be reviewed at this location from 8:00 a.m. until 5:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Deanne R. North, Office of Mobile Sources, Engine Programs and Compliance Division, (313) 668–4283, or James A. Blubaugh, Office of Mobile Sources, Engine Programs and Compliance Division, (202) 233–9244.

SUPPLEMENTARY INFORMATION:

I. Obtaining Copies of the Regulatory Language

The Agency has not included in this document the proposed regulatory language. Electronic copies (on 3.5″diskettes) of the proposed regulatory language may be obtained free of charge by visiting, writing, or calling the Environmental Protection Agency, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4288. Refer to Docket A–92–28. A copy is also available for inspection in the docket (see **ADDRESSES**).

The preamble and regulatory language are also available electronically on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. The service is free of charge, except for the cost of the phone call. Users are able to access and download TTN files on their first call using a personal computer and modem per the following information.

TTN BBS: 919–541–5742 (1200–14400 bps, no parity, 8 data bits, 1 stop bit) Voice Helpline: 919–541–5384. Also accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 a.m. to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<6> Non-Road
<1> File area #1. Non-Road Marine Engines

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (that is, ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

II. Contents

III. Statutory Authority and Background

A. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended [42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)].

B. Background

Pursuant to section 213(a) of the Clean Air Act as amended (hereafter, ''CAA''), EPA undertook a study of emissions from nonroad engines and vehicles to determine whether such emissions are significant contributors to ozone or carbon monoxide (CO) concentrations in more than one nonattainment area. A nonattainment area is a specified area that has failed to attain the applicable National Ambient Air Quality Standard (NAAQS) for a given pollutant. Based on the 1991 Nonroad Engine and Vehicle Emission Study (available in the docket),[1] EPA determined that nonroad emissions do, in fact, contribute significantly to ozone and CO concentrations in more than one NAAQS nonattainment area.[2]

Under section 213(a)(3) of the CAA, EPA is required to regulate those categories or classes of new nonroad engines and vehicles that contribute to ozone and CO air pollution. On November 9, 1994, EPA published a Notice of Proposed Rulemaking (NPRM) for emission standards for new gasoline spark-ignition (SI) and diesel compression-ignition (CI) marine engines pursuant to section 213(a) of the CAA.[3] The primary pollutants affected by this rule include ozone and hydrocarbons (HC) for gasoline SI engines and oxides of nitrogen (NO_X) for CI engines. In addition, EPA proposed that this rule have some impact on particles smaller than 10 microns (PM_{10}) and carbon monoxide (CO). EPA believes the standards proposed in this rule will reduce HC emissions from SI engines and reduce NO_X from CI engines and help areas come into compliance with the ozone NAAQS.

The proposed gasoline SI marine engine HC emission standards should decrease HC emissions from marine engines by approximately 75% from projected baseline emission levels by the year 2025. HC emission levels are estimated to be stabilized at this percentage reduction through complete fleet turnover by the year 2051. Emission reductions due to this regulation for diesel CI marine engines are expected to be equivalent on a per-engine basis to the reductions achieved from land-based CI engines. Land-based CI engines were estimated to achieve a reduction in NO_X of approximately 37% per year on a per-engine basis (see 59 FR 31306).

In the course of the comment period for the NPRM, some commenters suggested that EPA consider new approaches to some of the items addressed in the proposal; also, it became apparent that some aspects of the proposed regulation were not addressed in sufficient detail in the NPRM and needed additional development for further comment. This SNPRM seeks to address these matters. Today's notice modifies only those aspects of the November 9, 1994, NPRM that are identified herein; the remainder of the proposals set forth in the NPRM remain unchanged except to the extent necessary to make them consistent with the proposals set forth in this SNPRM.

EPA has received an extension of the court ordered deadline for the final rulemaking. The final rulemaking must now be signed by the Administrator on May 31, 1996. The court ordered deadline for this rulemaking is set forth in a consent decree resulting from consolidated lawsuits brought by Sierra Club and the Natural Resources Defense Council against the Administrator.[4]

IV. Proposed Changes; Discussion of Issues

A. Emission Standards for Spark-Ignition Engines

EPA has received comment suggesting that a more appropriate form of average emission standard for spark-ignition engines is of the type ''$HC+NO_X$.'' Comment has indicated that an $HC+NO_X$ average emission standard more appropriately recognizes the inherent SI engine technology trade-off between reductions in HC and necessary increases in NO_X. EPA is proposing a $HC+NO_X$ average emission standard structure for spark-ignition marine engines. Additionally, comment was received indicating that the SD/I emission standards as proposed were unnecessarily stringent and counterproductive. EPA is proposing different SD/I emission standards for HC and NO_X (now proposed as an average $HC+NO_X$ standard) that will not require any physical changes to SD/I engines.

1. $HC+NO_X$ Emission Standard

From an engineering perspective, it is clear that exhaust or engine out HC reductions from charge crankcase scavenged 2-stroke engines (e.g., old technology 2-stroke) of the magnitude proposed in the NPRM lead to a small NO_X increase for all spark-ignition internal combustion engines that do not utilize catalyst or exhaust gas recirculation technology. The HC and NO_X balance can be adjusted to some extent through other means, but some NO_X increase is inevitable if HC reductions are finalized on the order of magnitude proposed. EPA recognized this fact in the NPRM by setting a HC average emission standard for outboards and personal watercraft (OB/PWC) that achieved dramatic reduction (i.e., a 75% reduction) and setting a NO_X standard that was targeted at the average of the necessary increase in NO_X (i.e., 6.0 g/kw-hr) across the fleet.

Comment received in response to the NPRM from some in industry indicated that the NOx emission standard proposed was too stringent and that a $HC+NO_X$ average emission standard structure would be more appropriate. Commentors indicated that a $HC+NO_X$ average emission standard would provide them with needed flexibility when attempting to appropriately calibrate the OB/PWC four-stroke and direct-injection two stroke technology.

[1] EPA Publication Number 211A–2001 (November, 1991).

[2] 59 FR 31306 (June 17, 1994).

[3] 59 FR 55930 (November 9, 1994).

[4] Sierra Club v. Browner, Civil no. 93–0124 NHJ (D.D.C.).

Further, the NPRM standards would likely cause a low HC engine that generated positive emission credits according to the HC average standard to at the same time generate negative NO_X credits. Therefore, the low HC engine would have to cover the negative NOx credits with positive NO_X credits from other engines. These other engines would by nature have higher HC. Commentors suggested that the way to address this perverse effect would be to set a $HC+NO_X$ average emission standard. Although the perverse effect exists under combined or separate HC and NO_X standards, a combined standard gives manufacturers more flexibility to calibrate engines, while still achieving overall targets. This calibration flexibility may be appropriate because OB/PWC four stroke technology and direct injection two stroke technology have similar overall levels of $HC+NO_X$, while four stroke technology is cleaner on HC but would be more likely to have emissions above the separate average NO_X emission standard. An emission standard which allows HC and NO_X to be averaged together may treat these two control technologies more equitably.

EPA did not propose a $HC+NO_X$ average emission standard structure in the NPRM and requested comment surrounding the relative valuation of HC versus NO_X in terms of air quality. Air quality is determined according to a variety of local and regional conditions, including the relative background concentrations of volatileSince the NPRM, EPA has moved forward with two rulemakings that contain $HC+NO_X$ emission standards based on a 1 to 1 weighting of the two pollutants. This type of emission standard, $HC+NO_X$, was finalized for small gasoline engines under 19 kilowatt,[5] was discussed in an ANPRM for on-highway heavy-duty engines,[6] and has been promulgated for on-highway heavy-duty engine emission standards in the past. The issue of weighting other than 1 to 1 did not appear to be a concern in public comment to these prior rulemakings. EPA requests further comment on the issue of weighting.

Further a $HC+NO_X$ average ard structure is inherently inter-pollutant averaging. The Agency is not opposed to considering inter-pollutant averaging as a form of emission standard structure.

With respect to this particular marine regulation, EPA believes this combined $HC+NO_X$ average emission standard may be less of a potential concern from the perspective of air quality and HC/NO_X weighting given the magnitude of the large HC inventory reductions proposed and the comparatively tiny increase in NO_X inventories, which are small to begin with, resulting from the separate HC and NO_X emission standards proposed in the NPRM. Further, the NO_X emission standard is proposed to be phased into a combined $HC+NO_X$ emission standard over the 9 year phase-in period at a gradual rate, rather than allowing the final year NO_X increase in the first year of implementation (see detailed discussion of proposed NO_X phase-in in section IV.A.1.a below). Thus, it doesn't appear reasonable to say that a $HC+NO_X$ average emission standard structure would have a significant negative environmental impact. However, EPA requests comment should anyone think there may be a negative environmental impact.

EPA requests comment on its proposal to finalize a $HC+NO_X$ average emission standard for spark-ignition gasoline engines. Commenters are encouraged to comment on the appropriateness of an $HC+NO_X$ average emission standard, as well as any variation on the proposal. EPA is particularly interested in any data that may further characterize the relative value of HC versus NO_X with respect to air quality. Among other possibilities, should EPA determine that the combined standard would have a negative environmental impact, EPA may finalize separate HC and NO_X average standards for SI engines. However, the flexibilities afforded by a $HC+NO_X$ emission standard may encourage manufacturers greater flexibility to bring clean HC technology into the marketplace earlier than if the standards were separate.

2. Proposed Emission Standard Levels

a. OB/PWC. EPA proposes to retain the NPRM average emission standard levels for OB/PWC of 6.0 g/kw-hr NO_X and the associated HC average emission standards which result in a 75% reduction in HC by model year (MY) 2006. The $HC+NO_X$ average emission standard for OB/PWC is proposed to be the sum of these NPRM proposed average emission standard levels, although NO_X is proposed to be phased-in gradually over the 9 year phase-in period. Therefore, the following formulas and tables summarize the $HC+NO_X$ average emission standard proposed today for OB/PWC.[7]

$HC_{base}=(151+557/P^{0.9})$ or 300 g/kW-hr, whichever is lower, where:

HC_{base}=hydrocarbon base emission standard in g/kW-hr

P=rated power of the engine family in kilowatt (kW).

This HC_{base} is reduced over a 9 year phase-in period beginning in MY 1998 and ending in MY 2006. The average HC standard curve for a given MY is determined by the product of the HC_{base} curve function and the MY factor as shown in Table 1. The MY factor reflects equal percentage reductions per year from the baseline over the nine year phase-in period, resulting in a 75 percent decrease when fully implemented. For example, the average HC emission standard in 2004 is the product of the 2004 HC MY factor, 0.417, and the HC_{base} function. The resulting HC average emission standard function for MY 2004 is as follows:

Also, given the limitation on HC_{base} of 300 g/kW-hr maximum, the 2004 emission standard may not be greater than 0.417×300=125.1 g/kW-hr.

TABLE 1—GASOLINE SPARK-IGNITION OB/PWC MARINE ENGINES

[HC Average Emission Standards]

Model year	HC MY factor
1998	0.917
1999	0.833
2000	0.750
2001	0.667
2002	0.583
2003	0.500
2004	0.417
2005	0.333
2006 and after	0.250

Table 2 contains the $HC+NO_X$ average emission standards proposed today. These average emission standards represent the summation of the average emission standards proposed in the NPRM.

TABLE 2.—GASOLINE SPARK-IGNITION OB/PWC MARINE ENGINES

[$HC+NO_X$ Average Emission Standards]

Model year	$HC+NO_X$ average emission standard by MY
1998	$(0.917\times(151+557/P^{0.9}))+(1/9\times(6.0-2.0))+2.0$.
1999	$(0.833\times(151+557/P^{0.9}))+(2/9\times(6.0-2.0))+2.0$.
2000	$(0.750\times(151+557/P^{0.9}))+(3/9\times(6.0-2.0))+2.0$.
2001	$(0.667\times(151+557/P^{0.9}))+(4/9\times(6.0-2.0))+2.0$.
2002	$(0.583\times(151+557/P^{0.9}))+(5/9\times(6.0-2.0))+2.0$.
2003	$(0.500\times(151+557/P^{0.9}))+(6/9\times(6.0-2.0))+2.0$.
2004	$(0.417\times(151+557/P^{0.9}))+(7/9\times(6.0-2.0))+2.0$.

[5] 60 FR 34582 (July 3, 1995).

[6] 60 FR 45580 (August 31, 1995).

[7] The level of the OB/PWC emission standard for CO proposed in the NPRM remains unchanged.

TABLE 2.—GASOLINE SPARK-IGNITION OB/PWC MARINE ENGINES—Continued

[$HC+NO_X$ Average Emission Standards]

Model year	$HC+NO_X$ average emission standard by MY
2005	$(0.333\times(151+557/P^{0.9}))+(8/9\times(6.0-2.0))+2.0$.
2006 and after ..	$(0.250\times(151+557/P^{0.9}))+6.0$.

The proposed $HC+NO_X$ average emission standards in Table 2 are derived by adding the average HC emission standards that were proposed in the NPRM to phased-in NO_X levels. The NO_X baseline is 2.0 g/kw-hr and is gradually increased over the phase-in to 6.0 g/kw-hr. EPA chose this phase-in approach for the NO_X part of the average $HC+NO_X$ emission standard because it encourages manufacturers to avoid increases in NO_X all at once.

Further, this approach eliminates any windfall credits from the point of view of the market as a whole. If the standard were phased-in differently, such as setting the 6.0 NO_X level earlier than MY 2006, it could be said that windfall NO_X credits would be generated because the overall fleet NO_X average would be less than 6.0 g/kw-hr. Currently, the overall fleet average is at approximately 2.0 g/kw-hr. To allow a 6.0 g/kw-hr NO_X average in 1998 allows windfall credits equal to nearly 4.0 g/kw-hr of NO_X from the emission rate perspective. EPA mitigated this problem somewhat in the NPRM proposal by disallowing NO_X credit banking. However, it would be cumbersome to disallow NO_X credit banking under today's proposal for a combined $HC+NO_X$ average standard in which a NO_X credit is the same as a HC credit. Therefore, EPA thinks the most equitable way to phase-in the targeted NO_X level is to gradually phase it in from the current levels to the targeted level in equal percentages over the 9 year phase-in, which is what is proposed in Table 2.

At the same time, because of the inherent flexibility with a combined $HC+NO_X$ emission standard, the gradual phase-in should not inhibit the introduction of clean technology early. Further, the $HC+NO_X$ emission standard clearly achieves the same overall control as the proposal, if not better control for NO_X. EPA requests comment on the way in which the NO_X average emission standard should be combined with the HC emission standard over the phase in period. Comment should address the specific NO_X numbers that are recommended for each phase-in year and the rationale supporting the recommendation, including whether windfall credits are associated with the recommendation.

b. SD/I Engines. Comment received on the NPRM from some in industry indicated that the proposed emission standards for sterndrive and inboard (SD/I) engines are inappropriate because they would increase costs and thereby depress sales of SD/I engines, the cleaner engines in the marketplace. As stated in the NPRM, uncontrolled SD/I's are cleaner than OB/PWC's would be in the MY 2006 at the end of the phase-in. When EPA proposed emission standards for SD/I engines in the NPRM, EPA thought the standards would incur very little, if any, additional costs because they would simply require tighter calibration of SD/I engines.

Now, comments suggest that the necessary engines changes would be more costly than EPA expected and would adversely affect SD/I operation and sales. The emission standards proposed in the NPRM would require the manufacturers to spend money recalibrating the engines. The recalibration would cause the engines to have poor operating characteristics. Alternatively, because manufacturers may not meet the corporate average by recalibration alone, exhaust gas recirculation may need to be applied. Exhaust gas recirculation is costly and would not provide much environmental benefit. Hence, EPA now believes it would be counterproductive for EPA to finalize the emission standards for SD/I engines proposed in the NPRM because that action would introduce negative market forces which would discourage manufacturers from expanding the market with new models of cleaner SD/I engines and discourage people from buying the cleaner engines.

For these reasons, EPA is now proposing to apply two-thirds of the final phase-in MY 2006 OB/PWC $HC+NO_X$ emission standard to SD/I engines as an emission cap beginning in SD/I MY 1998.[8] Thus, SD/I engines would not be allowed to exceed two-thirds of the MY 2006 OB/PWC average emission standard of $(0.250\times(151+557/P0.9))+6)$ in the 1998 MY. Therefore, the 1998 MY emission standard for SD/I engines is shown in the following equation.

EPA believes that SD/I engines are much cleaner than this proposed emission level. All data available to EPA clearly shows that all SD/I engines have emission levels that are much below this level. Therefore, manufacturers will not need to make any changes to SD/I engines to achieve two-thirds of the MY 2006 OB/PWC average emission standard as a cap type standard.

EPA requests comment on this emission standard proposal for SD/I engines, particularly any comment indicating that any particular type of SD/I engine would be likely to exceed the proposed level. Refer to the docket for further discussion of the emission levels associated with SD/I engines.[9] EPA does not think backsliding is a concern at the proposed emission standard level, primarily because if backsliding were to occur, it seems that it would have occurred already, since these engines are currently unregulated and future technology is more likely to result in lower emissions, not backsliding.

EPA is considering whether a report should be submitted by the SD/I industry or by SD/I manufacturers that indicates the emission levels of the engines based on the voluntary testing that is performed by manufacturers. For example, manufacturers already do testing of the SD/I engines. Requiring a biennial report of this data (e.g., test results on specific test procedures, engine family identification, test fuel, type of engine: prototype, development, production, in-use or field engine) would seem to adequately identify if backsliding is or is not occurring. EPA requests comment whether EPA should finalize such a requirement or whether EPA should ask the SD/I manufacturers to submit these reports voluntarily.

In the alternative, EPA proposes not to apply emission standards to SD/I engines. EPA believes Section 213(a)(3) of the CAA offers the Agency the flexibility either to finalize the emission standards for SD/Is proposed above or not to impose emissions standards for SD/I engines, given the unique circumstances presented by SD/Is.

Section 213(a)(3) directs EPA to establish emission standards for ''classes or categories'' of new nonroad engines which achieve ''the greatest degree of emission reduction achievable through the application of technology * * *., giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers'' and other factors. 42 U.S.C. 7545(a)(3). EPA is proposing in this rule to treat all marine spark-ignition engines as one ''class or category'' of new nonroad engines for which EPA is establishing emission standards. SD/Is would constitute a subclass or subcategory of the marine SI class or category. Given this approach,

[8] The level of the SD/I emission standard for CO proposed in the NPRM would remain unchanged.

[9] Refer to EPA Air Docket A–92–28, docket submission IV–H–01.

EPA believes that, depending on circumstances on which it seeks comment below, the $HC+NO_X$ emission standards proposed for OB/PWC plus either (1) an SD/I $HC+NO_X$ standard set at two-thirds the MY 2006 OB/PWC $HC+NO_X$ standard, or (2) no SD/I HC or NO_X standard at all, satisfy the criteria set forth in Section 213(a)(3). In the unique circumstances presented by the marine SI industry, $HC+NO_X$ emissions from unregulated SD/I engines will be dramatically cleaner than $HC+NO_X$ emissions from MY 2006 and later OB/PWC regulated at the levels proposed in this rule. Given this fact, and the opportunity for some substitution of SD/I for OB/PWC in the market place, it is appropriate for EPA to consider what emissions standards for SD/Is, if any, will most appropriately satisfy the criteria of Section 213(a)(3) viewing marine SI engines as a whole.

EPA believes that requiring SD/Is to comply with two-thirds of the MY 2006 OB/PWC $HC+NO_X$ emission standard would achieve greater emission reductions from marine SI engines as a class or category than would the SD/I emission standard levels proposed in the NPRM, at less cost to the SI industry. If EPA were to finalize the SD/I $HC+NO_X$ standard proposed in this Notice, EPA would encourage the cleaner SD/I engine in the market by virtually eliminating any regulatory costs on SD/I engines (see discussion of minimal administrative burdens for SD/I engines, in Section IV.B.1 below). The minimal regulatory burden and consequent lower cost to SD/I engines compared to OB/PWC should encourage manufacturers to offer a greater range of SD/I engines, including smaller SD/Is that could compete with OB/PWC. Public health and the environment in turn would benefit from the emissions reductions achieved through any substitution of SD/Is for OB/PWC, and at lesser cost to the SI engine industry than the more stringent SD/I emission standards proposed in the NPRM.

EPA is proposing in the alternative to finalize no HC or NO_X emission standard for SD/Is because this alternative may achieve greater emission reductions from SI engines as a class or category than would the SD/I $HC+NO_X$ standard proposed above, at lesser cost to the SI industry. While the option of applying two-thirds of the MY 2006 OB/PWC $HC+NO_X$ standard level to SD/I would not require manufacturers to physically change the engines in any way, to the extent that an emission standard causes any costs on SD/I such standards may tend to limit SD/I substitution for OB/PWC and therefore offer somewhat less emission reductions than would no SD/I standard at all, while imposing more cost on the SI industry.

On the other hand, finalizing no HC or NO_X emission standard for SD/I raises a potential concern. There is the issue whether SD/I standards at the level proposed here would offer a useful backstop against emissions backsliding by SD/I. EPA believes that emissions backsliding, i.e. worsening emissions performance, may not be a realistic concern with SD/I because of several reasons. First, engines have been moving to electronic fuel injection which will provide better control over engine and emission performance. Customer demands for both low odor and low smoke discourage manufacturers from selling engines that have higher emissions. Also, the engine block manufacturers are improving the emission performance of the engine blocks because of carryover of on-highway emission performance through engine block design.

If EPA finalizes the alternative of no HC or NO_X emission standard for the SD/I subcategory, EPA is considering a suboption of issuing guidance to states that provides information of the relative emissions form the class or category of SI engines. This guidance would explain that EPA did not finalize emission standards on the subclass or subcategory of SD/I engines because they are relatively clean. EPA requests comment on whether industry could or should provide data either voluntarily or by requirement that exemplifies the emission characteristices of the fleet of SD/I engines in support of this guidance based on the current testing of SD/I engines which industry already performs as noted above. EPA also requests comment on the frequency with which manufacturers should be asked to require to provide such data.

EPA requests comment on both proposals regarding HC and NO_X emission standards for SD/I. Commenters should specify whether they prefer some level of HC and NO_X emission standards for SD/Is or none at all, and why they prefer one approach versus the other. If the commenter favors some level of HC and NO_X emission standards, EPA requests comment on the proposal to combine the standards into one $HC+NO_X$ standard and on the proposal to set the $HC+NO_X$ standard for SD/I at two-thirds of the proposed MY 2006 $HC+NO_X$ standard for OB/PWC. Should a commenter prefer a different $HC+NO_X$ standard level, EPA encourages the commenter to identify the standard level that it prefers and offer an explanation for this preference. EPA also seeks comment on which approach toward SD/I emissions best satisfies the criteria set forth in Section 213(a)(3), and why.

B. Administrative Program Flexibility

The Agency is proposing several modifications to the proposed rules in order to offer administrative program flexibility to certain types of engine technology and certain categories of small manufacturers, as described below in section C., ''Small Manufacturer Criteria.''

Specifically, EPA proposes to allow the Administrator to certify all sterndrive and inboard (SD/I) engine families on the basis of much less information than that proposed in the NPRM. As explained in more detail below, EPA proposes to find as part of this rulemaking that EPA currently has enough testing and other information regarding engines which meet EPA's proposed regulatory definition for SD/I such that additional emissions testing is not needed to determine if an SD/I engine family should be certified as conforming to the $HC+NO_X$ and CO standards proposed in this rule. This finding would make it unnecessary for manufacturers to submit test results in order to receive a certificate of conformity. To apply for a certificate for an engine family, the manufacturer need only submit a simple affirmation that the engine family meets the SD/I definition and related affirmations. Upon receipt of the affirmations, EPA would typically issue a certificate of conformity. In addition, EPA proposes to exempt all SD/I engine manufacturers from the proposed regulatory provisions concerning manufacturer-conducted production line and in-use testing requirements, related test equipment and test procedure provisions, and selective enforcement auditing.

The Agency received comments urging EPA to drop manufacturer-conducted production line testing and in-use testing requirements for all marine CI engines proposed in the NPRM. The Agency now proposes to apply the EPA-directed production line and in-use testing provisions to marine CI engines that already apply to similar land-based CI engines, as set forth in 40 CFR part 89 and discussed in more detail below. Also, the Agency is proposing some administrative program flexibilities for old technology two-stroke outboard and personal watercraft (OB/PWC) engines, for the reasons set forth below.

Finally, EPA proposes that the administrative programs for small marine CI engine manufacturers focus

on simplified certification and reduced enforcement requirements.

EPA believes it has authority under the CAA to offer the administrative program flexibility that is described in more detail below. The CAA states that the marine engine emission standards, when finalized, shall be subject to Sections 206, 207, and 208 of the Act, ''with such modifications of the applicable regulations * * * as the Administrator deems appropriate.'' 42 U.S.C. 7547(d). This statutory language grants EPA substantial discretion to offer flexibility in the compliance provisions of the marine engine final rule. The paragraphs below describe each of the administrative program flexibility provisions proposed in this SNPRM and explains EPA's rationale for offering such flexibility.

1. Sterndrive and Inboard Engine Manufacturers

The Agency believes that any regulations it issues for marine engines should offer substantial compliance flexibility to manufacturers of gasoline-fueled SD/I engines, in part because the market is comprised mostly of small manufacturers, but principally because the engines are inherently low-emitting compared to the OB/PWC alternative. In fact, the market is moving towards even cleaner technology (e.g., electronic fuel control) in the future without regulation. In the absence of compliance flexibility, small SD/I engine manufacturers would be particularly at risk, because their receipts would not bear the cost of compliance as proposed in the NPRM. The Agency does not wish to drive out of business manufacturers of engines that are already relatively clean.

The Agency recognizes that four-stroke SD/I engines are currently cleaner than OB/PWC engines with respect to hydrocarbon (HC) emissions. Even at the 75 percent HC reduction level proposed in the NPRM for OB/PWC engines, SD/I engines will still be much cleaner on average than controlled OB/PWC. Because EPA wants its regulations to encourage purchasers to substitute SD/I engines for OB/PWC engines rather than hinder that substitution, it is proposing certification flexibility for all manufacturers of SD/I engines as a means of keeping the costs of SD/I engines low.

In the NPRM, EPA discussed the issue of averaging between OB/PWC engines and SD/I engines as a way to encourage the purchase of the inherently cleaner SD/I engines. The Agency stated at that time that substitution of SD/I engines for OB/PWC engines was possible in some horsepower ranges and was environmentally desirable. In developing the NPRM, EPA considered averaging systems and other mechanisms (such as relative standard stringency) to encourage this substitution.

Comments on the proposal stated that many SD/I engine manufacturers were in fact very small operations that marinized engine blocks purchased from automobile manufacturers. Some of these companies only employ two people. Additionally, EPA received comment that the certification and testing burden was very onerous for such entities. The standards originally proposed for SD/I engines were set at a level that EPA believed would keep prices low and encourage growth in the SD/I market relative to the market for OB/PWC. However, these commenters believed that, rather than encouraging the growth of the cleaner SD/I market, EPA's proposed administrative program would have the unintended effect of forcing small SD/I manufacturers out of business, shrinking competition, and raising SD/I prices.

The Agency remains interested in encouraging the relatively clean SD/I technology and is concerned that burdens of certification and other administrative programs would decrease the substitution of SD/I engines for the higher-polluting OB and PWC. Therefore, EPA is proposing a very minimal certification process for all manufacturers of SD/I engines.

The certification process is proposed to simply include manufacturer submittal of an affirmation that the engine family meets the regulatory definition of a sterndrive or inboard engine, an affirmation that the manufacturer has no test data or other engine information indicating that the engine family would not comply with the emission standard, and an affirmation that the engine meets applicable safety requirements. Upon receipt, the Administrator would issue a certificate of conformity, unless, based on all available information, the Administrator has reason to believe that the engine family may not comply with the applicable emission standards and safety requirements and therefore is not able to determine that the engine family conforms and should be issued a certificate.

While EPA believes current SD/Is meet the proposed emission standards,[10] circumstances could arise in the future where EPA may have reason to doubt that a particular engine family meets the applicable emission standards. Therefore, the Agency proposes that in such circumstances EPA may require, at its discretion, other information on the engine family in addition to the affirmations specified above. For example, the Administrator may require the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with applicable emission standards.

EPA expects this proposed certification process for SD/I engine families to be straightforward, involving no more than a one-page submittal to EPA and an expedient issuance of a Certificate of Conformity. The submitter would not need to include test results in its submission if its engine meets the regulatory definition of an SD/I because EPA would determine as part of this rule that EPA currently has enough emission testing and other information regarding engines meeting the SD/I definition such that additional testing is not needed to determine whether an SD/I engine family should be certified. EPA is exploring electronic data submission alternatives that may make this process virtually burden free for the manufacturers.

EPA believes that the engines currently are well below the proposed emission standards level. EPA has test results on the regulated test procedure and confidential test result information submitted by manufacturers. All data is presented in the docket, with any confidential data masked so as to not reveal its origin (Refer to Docket A–92–28 submission IV-H–01). EPA encourages comment on this data and the submission of further data that either supports or refutes the data presented.

The Agency believes Section 206 of the CAA offers it the flexibility to determine through rulemaking that EPA currently has enough testing and other information such that additional emissions testing is not needed to determine whether an SD/I engine family should be certified as conforming to the applicable emission regulations (i.e., a cap of two-thirds of the proposed MY 2006 OB/PWC $HC+NO_X$ emission standard and a CO cap of 400 g/kW-hr). While the language of Section 206 contemplates an individualized, adjudicatory procedure, Supreme Court precedent allows EPA to establish issues common to many adjudications through rulemaking. See *American Hospital Assn.* v *NLRB,* 499 U.S. 606, 612 (1991) (''[E]ven if a statutory scheme requires individualized determinations, the decisionmaker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress

[10] Refer to EPA Air Docket A–92–28, docket submission IV–H–01

clearly expresses an intent to withhold that authority.''); *Heckler* v. *Campbell,* 461 U.S. 458, 467 (1983). Therefore, EPA believes that, should information available to EPA support a finding that additional emissions testing is not needed to determine whether SD/I engine families should be certified, it is appropriate for EPA to make this finding through rulemaking and offer for SD/I engine families the minimally burdensome individualized determination of conformity described above. The individualized determination would basically address whether a specific engine family fits the definitions for sterndrive or inboard engines proposed in this rulemaking, whether there is any information specific to this engine family that would indicate it in fact would not be expected to conform to the standards, and whether the specific engine family meets the safety criteria of Section 206(a)(3).

In addition, the Agency is proposing to exempt SD/I manufacturers from manufacturer production-line testing, manufacturer in-use testing, and related requirements. EPA is proposing that Part 91 subparts A, B, H, I (recall portions only), J, K, L, and M apply to SD/I engine manufacturers, in order to minimize compliance burdens on these manufacturers. While EPA is proposing to exempt these manufacturers from subpart G, Selective Enforcement Auditing, EPA retains authority under Sections 206(b)(1) and 208 to test newly manufactured engines and to inspect production facilities and processes to determine whether the manufacturer is complying with the information submitted for certification. Further, EPA would retain authority under Section 206(b)(2) of the CAA to suspend or revoke the certificate for engines that do not conform with applicable emission standards.

The Agency requests comment as to which subparts of Part 91 should apply to SD/I engine manufacturers and comment on the proposed certification process as outlined above. Further, EPA requests comment on its proposal to find through rulemaking that EPA currently has enough testing or other information regarding engines which meet the regulatory definition of SD/I such that additional emissions testing is not needed to determine whether an SD/I engine family conforms to the $HC+NO_x$ and CO emission standards proposed in this rule. Commenters are encouraged to evaluate the data on which EPA proposes to rely and to submit to EPA any additional relevant data, together with the commenter's evaluation of the submitted data. EPA requests comment on whether it is appropriate to treat small SD/I manufacturers (as defined in more detail below) separately from other SD/I manufacturers and if so, which subparts of Part 91 should apply to small SD/I manufacturers.

Finally, EPA requests comment on the following definitions. A sterndrive engine is defined as a 4-stroke engine (unless otherwise designated by the Administrator (e.g., a personal watercraft engine)) that is designed such that the drive unit is external to the hull of the marine vessel, while the engine is internal to the hull of the marine vessel. An inboard engine is defined as a 4-stroke engine (unless otherwise designated by the Administrator (e.g., a personal watercraft engine)) that is designed such that the propeller shaft penetrates the hull of the marine vessel while the engine and the remainder of the drive unit is internal to the hull of the marine vessel. Commenters are encouraged to offer any changes to the definitions which are needed to allow the commenter to concur with EPA's proposal to offer non-testing certification to qualifying SD/I engine families. Commenters should explain the reasons for any proposed alterations to the definitions.

2. Marine Compression-Ignition Engine Manufacturers

In comments responding to the NPRM, several small CI engine marinizers characterized the proposed administrative program requirements as very burdensome for the small proportion of marine emissions attributable to such engines. Marinizers informed EPA that they are truly small manufacturers, in terms of market share, production, and number of employees, compared to all other manufacturers of nonroad diesel engines. Furthermore, they believe that their marinized engines may already meet or nearly meet the proposed standards.

The Agency now proposes certification program flexibility for small marine CI engine manufacturers; that is, small marine CI engine manufacturers will have reduced certification data requirements. EPA proposes that part 89 subparts A, B, C, G, H, I, J, and K be applicable to manufacturers of small marine CI engines. This means that the manufacturers must undergo simplified certification, while receiving reduced enforcement requirements. While EPA is not proposing to apply subpart F, Selective Enforcement Auditing, to small marine CI manufacturers, EPA retains authority under Sections 206(b)(1) and 208 to test newly manufactured engines and to inspect production facilities and processes to determine whether the manufacturer is complying with the information submitted for certification. The Agency requests comment as to which subparts of part 89 should apply to the small marine CI engine manufacturers. Further, EPA would retain authority under § 206(b)(2) of the CAA to suspend or revoke the certificate for engines that do not conform with applicable emission standards.

The Agency has also received comments in response to the NPRM regarding the proposed production line testing and in-use testing requirements for marine CI engines. The comments did not support finalizing these two types of testing because EPA does not require them for land-based CI engines in 40 CFR Part 89, and many of the land-based CI engine blocks are used for marine CI engines. If EPA were to finalize its requirements as proposed, it would impose different requirements for essentially some of the same engines. The Agency has considered these comments and now proposes not to require marine CI engines to comply with the production line and in-use testing provisions that EPA proposed in the NPRM; instead, it proposes that marine CI engines be subject to the SEA testing and recall provisions that apply to land-based CI engines greater than 37 kilowatts (kW), as set forth in 40 CFR part 89.

3. Old Technology Two-Stroke Outboard Engine and Personal Watercraft Manufacturers

The Agency received significant comment in response to the NPRM regarding the cost of the CO cap and the administrative programs relative to old technology two-stroke OB/PWC engines. Manufacturers argued that imposing the costs of certification testing and enforcement program testing on old technology OB/PWC engines is not a cost-effective requirement, because these engines will be phased out of production anyway. Also, many old technology OB/PWC exceed the CO cap, and money would have to be spent to redesign product and production lines to meet the CO standard even though the old technology will be phased-out. Manufacturers would rather spend their limited resources on developing and producing cleaner, new technology OB/PWC engines.

The new, cleaner technology will require extensive changes in production lines and engine design. The engine changes do not simply consist of using a different fuel system, but involve designing whole new engines. Therefore, millions of dollars will be

needed for capital costs over the phase-in period. Manufacturers have also stated that they would potentially have to build twice as many test facilities, in order to accommodate testing of old technology OB/PWC engines as well as new technology OB/PWC engines, and half of those facilities would become idle as soon as manufacturers phased out the old technology.

In view of these comments, EPA believes it is appropriate to mitigate compliance costs for old technology OB/PWC engines through compliance flexibility, waivers, and an exemption from the CO cap, if one if finalized,[11] until late in the phase-in in order to free up the manufacturers' limited resources for new technology development.

Because adequate test data on old technology engines currently exists, and that data shows engine emissions are so high that production variance and in-use deterioration are almost negligible effects on the emission rate, imposing compliance costs on the old technology engines would appear to yield little environmental benefit. On the other hand, allowing flexibility in the administrative programs for old technology, which will be phased out of production, will free up money for the manufacturers to develop, produce, and market clean technology OB/PWC engines.

The Agency proposes to define old technology OB/PWC engine families to be those that were in production for the 1997 and previous model years and that did not utilize newer technologies, such as four-stroke technology, direct-injection two-stroke technology, or catalyst technology. It is important to restrict this definition to engines that were in production both in 1997 and in previous years so an old technology engine family that would first be brought into production in 1997, just before the regulations take effect, could not take advantage of flexibilities proposed here. EPA does not want to allow the flexibilities to be gamed in this way. For example, the jetboat market segment is expanding rapidly. A manufacturer electing to bring in a new jetboat engine family in 1997 that uses old technology (e.g., simple two-stroke engine design) should not enjoy the flexibilities proposed here. The reason is that the manufacturer is choosing to spend money to bring more old, dirty technology into the market rather than spending the money on new, cleaner technology. To allow flexibility in this case on the eve of the implementation of the proposed 1998 MY emission standards is contrary to EPA's intent in offering this flexibility. EPA is offering this flexibility to allow the manufacturers to spend money on new, cleaner technology rather than old, dirty technology that will need to be phased-out of production.

EPA is proposing to allow manufacturers of old technology OB/PWC engines for a limited time to comply with reduced data submission requirements for certification,[12] to be exempted from Part 91 subparts D, E, F, G, I (non-recall portions only), J, and M containing compliance monitoring programs, and to be exempted from any CO cap if it should be included in the final rule. However, EPA does not intend to allow such provisions in the latter years of the nine year phase-in of emission standards. The Agency believes it is important to the integrity of the averaging standard that at the end of the nine year phase-in, all OB/PWC engine families submit the certification and testing data normally required for obtaining certificates of conformity and that all OB/PWC engine families comply with enforcement provisions and any CO cap. Further, because the phase-in period is nine years, EPA believes that allowing this flexibility for the first six years will be adequate to mitigate costs and will also encourage the introduction of the cleanest technology sooner.

Therefore, EPA intends to implement such flexibility through the sixth year of the phase-in. The Agency requests comment on allowing this flexibility for old technology OB/PWC engines and on EPA's intended implementation strategy for this flexibility. Commenters are encouraged to express separately their views on each aspect (i.e., certification, enforcement, and the CO cap) of the flexibility proposed here as EPA may finalize all, some, or none of them. EPA also requests comment on the proposed definition of old technology OB/PWC and alternative approaches.

4. Other Potential Administrative Program Changes

a. Recall. EPA is considering omitting from the final spark-ignition marine engine regulations (Part 91) those portions of proposed Subpart I regarding recall.

Section 213(d) of the CAA provides that new nonroad engine emission standards ''shall be subject'' to the provisions of sections 206 through 209. EPA believes that this statutory provision is self-executing, so that the marine engine standards proposed in this rulemaking would be subject to the remedial provisions of section 207(c)(1) as well as, for example, the certification provisions of section 206. Further, EPA believes that the remaining language in section 213(d) does not require promulgation of regulations to implement section 207(c) for marine engines, except where they are ''necessary to determine compliance with, and enforce,'' such new nonroad engine standards.[13]

In this rulemaking, EPA believes that it may not be necessary to promulgate regulations specifying procedures to implement § 207(c) in order to determine compliance with and enforce the proposed marine spark-ignition emission standards. The in-use averaging, banking, and trading (ABT) program proposed in this SNPRM makes it highly improbable that EPA would ever find that a substantial number of marine engines do not conform to the applicable emissions standard or FEL, since any noncompliance may be offset through ABT. Moreover, EPA expects that remedial action under section 207(c) would be largely ineffective, both because industry structure and engine owner turnover make it difficult for a manufacturer to identify the owners of a nonconforming engine, and because safety-related recalls of marine engines have generated little consumer response in the past. For these reasons, EPA would not expect to make a determination of nonconformity under section 207(c) regarding marine engines. Furthermore, in the unlikely event EPA should find it appropriate to take such action, EPA retains authority either to take action directly under section 207(c) or to promulgate appropriate regulations at that time.

EPA seeks comment whether EPA should omit the recall portions of subpart I (Part 91) from the final rule. Commenters are encouraged to explain the basis for their opinion, including all policy reasons and all circumstances regarding the marine engine industry which favor one approach versus another, as well as the statutory basis for the preferred approach.

[11] EPA is currently considering whether to include a CO cap in the final rule in light of the comments it received on the NPRM and its authority under the CAA.

[12] EPA proposes that it may accept, at its discretion, summary information on an old technology OB/PWC engine family in lieu of the full Application for Certification. The Agency plans to explain its policy on accepting summary information via guidance to be generated and distributed to manufacturers subsequent to the publication of the final rule. The Agency welcomes comments on whether guidance is the appropriate mechanism for defining the summary certification procedures, or whether EPA should engage in notice and comment rulemaking (at some later date) to define the procedures.

[13] See also discussion of section 207(c) and recall in the NPRM 59 FR 55943–46.

EPA is also considering not applying Part 89, Subpart H (recall regulations) to small marine CI engine manufacturers (as proposed to be defined in this Notice). As with marine SI engines, EPA expects that remedial action under § 207(c) for marine CI engines would be largely ineffective, both because industry structure and engine turnover make it difficult for a manufacturer to identify the owners of a nonconforming engine and because safety-related recalls of marine engines have generated little consumer response in the past.

Unlike marine SI engine manufacturers, however, marine CI engine manufacturers would not have available credits generated through an in-use credit program to offset any in-use noncompliance. Instead, it may be appropriate not to apply Part 89, subpart H, to small marine CI engine manufacturers because of the relative burden of § 207(c)(1) remediation on smaller marine CI engine manufacturers compared to larger marine CI engine manufacturers. Even if the recall regulations were to apply, EPA would expect that any Agency decision on whether to take formal action under § 207(c) would take into consideration the circumstances involved, including the nature of the industry and the specific manufacturer involved.

EPA seeks comment, including any available data, on the relative potential burden of recall on marine CI engine manufacturers depending on their size. EPA also seeks comment whether EPA should apply Part 89, subpart H to small marine CI engine manufacturers (as proposed to be defined in this Notice) or whether any differences in potential manufacturer burden should be addressed through EPA's discretion in implementing the recall authority. Commenters are encouraged to explain the basis for their opinion, as well as any variation in the definition of small marine CI engine manufacturer which would affect their opinion.

b. 1998 MY Corporate Average Compliance. In the NPRM, EPA proposed that manufacturers begin the phase-in of the spark-ignition gasoline engine regulations in the 1998 MY. Production of the 1998 MY will begin in May, 1997, and this final rulemaking is scheduled to be published in May, 1996. Manufacturers have informed EPA that 1998 MY compliance will be challenging because they must have their product line certified and in compliance on a corporate average basis within one year.

EPA is concerned with this short amount of time between the final rule and the first year of compliance. However, EPA strongly wishes to implement the rulemaking for the 1998 MY so as to achieve emission reductions in 1998 from this source. As the emission reductions in MY 1998 are very important, EPA is reluctant to forego the 1998 MY. Therefore, EPA is not revising its proposal to begin implementation in 1998 MY.

On the other hand, the timing is clearly tight. There may be circumstances where, despite the manufacturer's best efforts, compliance in the 1998 MY is unattainable. When compliance is unattainable due to circumstances that are clearly beyond the control of a manufacturer, it may be reasonable to allow the manufacturer some flexibility in compliance.

Compliance, for this rulemaking, means having a zero or positive emission credit balance for the manufacturer's product line at the end of the MY. Therefore, a manufacturer would potentially be in noncompliance if it could not generate or buy sufficient positive emission credits to offset the amount of negative emission credits reflected in its product line.

When the manufacturer is in such a situation for the 1998 MY due to circumstances that are clearly beyond its control, EPA is considering allowing the manufacturer to combine its 1998 MY ending credit balance (i.e., a negative balance) with the 1999 MY credit balance. In this special circumstance, the compliance period would be a 2 year averaging period across the 1998 and 1999 MYs. The advantage of this approach is that it inherently requires remediation of the lack of reduction in 1998 MY.

Circumstances beyond the control of a manufacturer would be those types of circumstances where the manufacturer had taken clearly laid out steps to make sure its product plans would be met, yet could not produce its appropriate complying product plans due to factors associated with suppliers not providing appropriate inputs. For example, test facilities might not be operational due to delays in construction that are beyond the control of the manufacturer or its designated contractor (e.g., the test equipment supplier did not deliver the equipment in time to be installed).

EPA requests comment on the need for flexibility for 1998 MY compliance due to circumstances outside the control of the manufacturer. Specifically, EPA requests comment on allowing a 2 year averaging period for a manufacturer which EPA determines is in such a situation, including comment on a different averaging period (e.g., 18 months, 30 months). EPA requests comment on specific circumstances which would clearly be outside the control of a manufacturer leading to the inability to comply in 1998 MY. Finally, EPA requests comment on any other alternatives.

C. Small Manufacturer Criteria

In their comments to the NPRM, small marine manufacturers provided new information to EPA. This information has heightened EPA's awareness that the proposal would impact different segments of the marine market in different ways.

One example is the engine marinizer: rather than manufacturing the engines themselves, smaller marine engine companies (*i.e.*, ''marinizers'') will often modify engine blocks originally produced for other nonroad or on-highway applications for marine applications. Marinizers may have as few as two employees and typically do not have the resources to comply with certification and enforcement provisions proposed in the NPRM. The cost of one test for one engine can be $5,000–$10,000 at a contract laboratory, while the cost of test equipment can run up to one half million dollars. Many marinizers have indicated that the cost of certification reporting burdens alone will dramatically increase their costs and may force them out of business.

Based on the written comments to the NPRM described above, EPA proposes to allow some flexibility in the certification and enforcement provisions proposed in the NPRM for small manufacturers. The proposed flexibility is described in IV.B. above. In the following sections, EPA proposes small manufacturer criteria for the marine CI engine and SD/I engine market segments. Each market segment has a different, unique aspect from a regulatory and market structure perspective, as explained below. Therefore, different small manufacturer criteria are proposed for each market segment.

1. Sterndrive and Inboard Engine Manufacturers

Although EPA is proposing an emission standard for SD/I engine families that will only necessitate a marginal compliance burden to certify the engine family and no other administrative program burdens, EPA is proposing a small manufacturer criteria in the event that the rulemaking should be finalized with the need for such a criteria.

The market for SD/I engines is composed of one very large market leader, several medium-sized market players, and a number of very small (in terms of both receipts and production volumes) manufacturers. For the

purposes of the SD/I engine category only, EPA proposes to define small manufacturers as those which have less than 15 percent of the United States market share of SD/I engines on a unit volume basis, to be determined by averaging engine unit volume for the past three model years. The average total SD/I market unit volume for the same model years would be used to determine whether a manufacturer's market share was less than 15 percent. Manufacturers with greater than 15% market share are clearly the largest manufacturers.

The Agency requests comment on this market share percentage criterion and on alternatives for defining a small SD/I manufacturer.

2. Marine Compression-Ignition Engine Manufacturers

The Agency proposes that a small marine CI engine manufacturer be defined as one for which the business concern together with all its domestic and foreign affiliates (*e.g.,* the parent company and all the subsidiaries): (1) Have total annual receipts under $100 million, and (2) have less than a 4 percent United States market share on a unit volume basis for all nonroad diesel engines. For example, 4 percent market share is approximately 12,000 units based on a total volume of all nonroad diesel engines of 300,000. According to the proposed criteria, the average annual receipts per engine from 12,000 units could not exceed approximately $8,300 per engine ($100 million/12,000 engines).

The Agency proposes to accept the definitions of ''affiliation,'' ''annual receipts,'' and ''business concern'' that are contained in 13 CFR Part 121 of the Small Business Administration (SBA) regulations. Compliance with the market share criterion will be determined on the basis of data averaged over the past three fiscal years, in a manner similar to that defined in the SBA regulations for annual receipts.

The definition proposed herein would give flexibility in the rule for manufacturers of different sizes of marine CI engines and different production volumes. If a manufacturer meets the definition's criteria, EPA proposes that its engine families be eligible automatically for the certification program flexibility described in section IV.B.2. above.

The Agency requests comment on the advisability of two additional small entity criteria that it has not proposed. The first of these would be to limit small manufacturer flexibility to engine families under 1500 kW only. This is because engines over 1500 kW are expensive, and therefore, certification and enforcement costs have a small effect on engine price and should be easily recovered. The second would be to limit small manufacturer flexibility using an engine speed designation for high-speed marine CI engines, instead of a maximum power criterion. The Agency requests comment on designating high-speed engines as those over 1000 revolutions per minute (rpm). Comment submitted in response to the NPRM on the issue of harmonization with the proposed emission standards by the International Maritime Organization included a recommendation on a 1500 kW cutpoint for EPA's proposal.

The Agency also requests comment regarding specific alternative criteria for designating small manufacturers and on equity issues associated with the proposed criteria. In addition, EPA is considering whether to propose applying the small marine CI engine manufacturer definition to all aspects of the CI engine industry. EPA is not aware of any nonmarine CI engine manufacturers that meet this criteria. However, if any exist or enter the market, it seems appropriate that the same provisions apply. EPA welcomes comments on this issue.

3. Outboard Engine and Personal Watercraft Manufacturers

a. Competitive Issues. Manufacturers of outboards or personal watercraft that commented on the proposal appear to fall into at least one of two categories: (1) Those which do not meet the SBA's definitions of ''small'' and (2) manufacturers that purchase engines and market them as their own, rather than being actual engine manufacturers. Thus, EPA is not aware of any manufacturers of OB/PWC engines that it believes would need compliance flexibility as small volume manufacturers. Moreover, this category of marine engines produces the highest HC emissions per unit power output, and is therefore the category of marine engines targeted for the largest HC reductions. The Agency is hesitant to offer a permanent waiver of more stringent testing requirements for the engines of most concern to it. EPA wants to be certain that manufacturers are developing, producing, and achieving the targeted HC emission reductions for OB/PWC. For these reasons, EPA does not propose to offer small entity regulatory relief to manufacturers of OB/PWC engines.

However, while in the absolute sense there are no ''small'' manufacturers, in the relative sense there are smaller manufacturers relative to the larger manufacturers. Furthermore, there are differences in the product lines of the manufacturers. Some manufacturers are dominant in the personal watercraft market while at the same time being less dominant in the outboard market (e.g., Yamaha). Most of the PWC manufacturers specialize only in personal watercraft and do not produce outboards.

EPA proposed in the NPRM a combined averaging set for outboards and personal watercraft, even though there are differences in product lines between manufacturers with some producing both types or only one type. EPA thinks this strategy best for many reasons. First, this strategy allows manufacturers to take advantage of the most cost-effective means of achieving emission reduction targets amongst engines with similar emission problems. Both outboards and personal watercraft currently utilize old technology 2-stroke engines and have similar options available to reduce those emissions. Second, achieving the most cost-effective emission reductions means that the market achieves the lowest price increase to the consumer. Third, EPA is not interested in protecting manufacturer market share at the expense of higher consumer prices for control technology. EPA thinks that broader averaging sets encourage a more competitive market environment which in turn limits non-competitive (e.g., oligopolistic) market forces and acts to keep consumer prices low. Fourth, a combined OB/PWC averaging set gives more flexibility to manufacturers, particularly the smaller PWC manufacturers, to buy credits from other manufacturers (including those they do not directly compete with) instead of putting on control technology that is not cost-effective. Therefore, in effect, a combined OB/PWC set inherently improves small manufacturer flexibility. For these reasons, EPA is very hesitant to consider splitting up the combined OB/PWC averaging set.

In response to the NPRM, EPA received significant comment from some manufacturers that only produces PWC indicating concern with the appropriateness of a combined OB/PWC averaging set.[14] These manufacturers seemed to be concerned that manufacturers that produce both outboards and personal watercraft (only one such manufacturer currently exists) can take competitive advantage of their ability to average their OB engine

[14] Refer to the Kawasaki docket comments IV–D–58, statement or Artco, Kawasaki, and Polaris IV–D–66 and Polaris statement IV–51 for EPA Air Docket A–92–28.

families with their PWC engine families. The PWC-only manufacturer seemed to be concerned that their competitor has more flexibility to meet the emission standards due to the possibilities of generating internal to the company positive credits from the OB product line that can potentially delay control on PWC or provide cheaper credits to cover lesser control on PWC. One PWC-only manufacturer stated their belief that the other manufacturer will convert its OB products into 4-stroke and that will harm the competitive position of manufacturers who only produce PWC and market share will be eroded. There is concern that the end result will be that the OB/PWC manufacturer will become a much more dominant manufacturer. It is feared by the commenter that no credits would be available in the market that would allow the same flexibility for the PWC manufacturers that this one manufacturer will inherently have under the combined OB/PWC set.

EPA would be concerned if a single manufacturer gained control over the PWC market simply because of the combined OB/PWC averaging set.

On the other hand, EPA is concerned that splitting the averaging sets will give significant competitive advantage to the currenta dominant PWC manufacturers, particularly against the PWC manufacturers with smaller market share. The marginal cost-effectiveness analysis by which EPA set the 75% reduction in HC requirement allows small engine families, such as those produced by PWC manufacturers with smaller market share, to avoid manufacturing changes that are not cost-effective in a relative sense and purchase sufficient credits in the market. This is because the marginal cost-effectiveness for each engine family was ranked and the standard was set at the point where it became less cost-effective to gain further emission reductions. Splitting the averaging set restricts the potential credit supply and the result may be that the most cost-effective credits are not available. Therefore, even if it is more marginally cost-effective to achieve emission reductions from OB, for example, restricting the averaging between OB and PWC means that some of the most cost-effective reductions may not be taken advantage of. Further, the smaller PWC manufacturers who would most need to buy credits would be restricted to purchasing credits from their direct competitors, instead of the OB manufacturers they do not directly compete with. The effect would be that the dominant PWC manufacturers would be able to gain competitive advantage because they produce larger unit volumes and can take advantage of economies of scale, thereby generating positive credits in a more cost-effective manner than lower volume manufacturers. Thus, protecting the market share of current dominant manufacturers by splitting the averaging set may have the effect of strengthening the dominant manufacturers' market positions against the smaller PWC manufacturers. EPA is seeking an emission standard structure that promotes a competitive market and promotes the cleanest technology. EPA thinks it essential to allow all smaller manufacturers the flexibility intended with the combined OB/PWC averaging set.

Comments are requested on separating the averaging sets as an approach to address the specific problem raised with respect to the competitive impact of a combined OB/PWC averaging set. EPA requests comment on requiring separate averaging sets for a short while during the phase-in period or a portion of it. From an environmental point of view, this will likely ensure that the manufacturer who produces both OB and PWC invest in control technology for PWCs in the early years of the phase-in. EPA is hesitant to consider this option and would only consider it for a short while (e.g., a portion of the phase-in).

EPA requests comment on why EPA should consider requiring separate sets, even for a portion of the phase-in period, if this limits the ability of the market to generate the most cost-effective controls overall. Further, EPA requests comment on the docket comments submitted by Kawasaki (IV–D–58 for EPA Air Docket A–92–28).

Also, EPA notes that it would have to re-evaluate the appropriateness of the proposed OB/PWC emission standards if the averaging sets were to change, because of the potential effect of the separate sets on such factors as technological achievability and cost (see section 213(a)(3) of the CAA). The Agency seeks comment on what changes, if any, should be made to the proposed emission standards if separate averaging sets are finalized, with an explanation of the reasons for the commenter's preferred approach.

Additionally, EPA requests comments on the need for any change from the combined OB/PWC averaging set that EPA proposed. Change is questionable since already manufacturers may purchase credits in the market rather than apply control technology in the early years of the phase-in thereby giving a manufacturer extra leadtime for whatever reason. Further, if the credit market is economically efficient (i.e., a manufacturer does not act in a predatory manner to gain market share) then the OB manufacturer would make positive credits available to PWC manufacturers because this would lower the cost of OB compliance, either raising profit margin or increasing sales, or both.

EPA requests comment on systems that would encourage the credit market to function efficiently. Any comments that present ways to make the market function prospectively are especially encouraged. Comment is requested on the need to have a formalized credit market. EPA would prefer that such a market system not be run by EPA and requests comments on making this market run by an independent third party if a formalized market is advocated. EPA is seeking comment in order to determine whether it should propose action through a subsequent rulemaking.

b. Market Entrants. The Agency requests comment on the issue of flexibility for small OB/PWC engine manufacturers that may enter the market in the future. EPA would be concerned should administrative program burdens add an additional production cost that discourages market entrants and limits additional competition in the marketplace, particularly for clean technology. The Agency would consider allowing administrative program flexibility for a short period of time for new OB/PWC market entrants similar to that which it is proposing for small marine CI engine manufacturers, such as reduced certification requirements, as described above in section IV.B. As EPA would like to encourage clean technology, such market entrant flexibility would only be considered for engines with emissions falling below the MY 2006 average HC emission standard level.

The Agency requests comment on defining a market entrant as a manufacturer that has not produced OB/PWC engines before one MY prior to the current MY. This suggested definition would allow flexibility for market entrants for the first two model years. In addition, EPA requests comment on whether flexibility should be limited to small market entrants and, if so, requests suggestions for alternative definitions of a small market entrant.

D. Relative Use by Age Function

The Agency proposes to include a statistical function in the credit calculation formula in § 91.207 of the regulations proposed for 40 CFR Part 91, representing relative usage of engines by engine age and power output. EPA did

not propose the use of such a function in the NPRM for the generation of new engine family credits. However, EPA is inclined to believe that for OB engines usage does vary by age of the engine and by power output. The relationship between age of engine and relative usage was assumed to be linear according to the following function, which is based on an assumption of 30% deviation (i.e., 1.3 and 0.7).

where

t=age of the engine in years
μ_{use}=mean use in hours per year
μ_{life}=mean life

The average annual use derived for the new engine credit generation methodology proposed in the NPRM still appears to be an adequate representation.

For outboard engines, the probability that an engine will survive into the future depends upon the power output (in terms of rated kW or rated horsepower) of the engine. Smaller engines typically last longer than larger engines.[15] Therefore, the relative use by age function uses mean life as in input. In turn, the mean life is dependent upon power output. Power output identifies the size of the engine.

The Agency is aware that the State of Wisconsin performed a survey of the 1995 summer season to obtain better information on relative use of engines by age. If the Wisconsin data becomes available before the final rule is promulgated, EPA will publish a notice of data availability regarding the survey results. EPA may consider the survey results when deciding how to finalize the rule with respect to the relative use by age function.

E. Manufacturer Production Line Testing Program

The NPRM described a proposal for marine SI and CI engine manufacturers to perform self-audits of new marine engines. The proposed self-audit program would be an emissions compliance program for new production marine engines in which manufacturers would be required to test engines as they leave the production line, without EPA oversight.

The Agency believes that a post-production compliance program may be necessary for OB/PWC only to verify that production engines comply with the applicable family emission limit (FEL), particularly during the early years of the program. The NPRM noted that the need for such a program is particularly vital in a regulatory situation in which manufacturers participate in an averaging, banking, and trading program and receive usable or salable credits for declaring FELs more stringent than the emission standard. The NPRM proposed a self-audit program comparable to the California Air Resources Board's (CARB's) current Quality Audit Program for new utility and lawn and garden engines. As the NPRM described, this program would assure that engines from each engine family will be tested periodically and their compliance evaluated on a quarterly basis.

In this supplemental notice EPA proposes to modify the self-audit program set forth in part 91 subpart F of the NPRM's proposed regulatory text. First, EPA is proposing to change the name of the proposed Manufacturer Self-Audit Program to the Manufacturer Production Line Testing Program, because this title more clearly indicates that this proposal is applicable for emission testing engines from the manufacturer's production line. Second, EPA proposes to limit the production line testing program provisions to SI OB/PWC engines. As described in more detail in section IV.B.2. above, EPA now proposes that all marine CI engines be subject to the Selective Enforcement Auditing and recall provisions that have been promulgated for land-based CI engines. Third, EPA proposes to adopt the Cumulative Sum (CumSum) procedure described below, rather than CARB's Quality Audit Program procedure, because EPA has noticed a potential problem with the provisions of subpart F as proposed. CARB's Quality Audit Program is based on a fixed sample size approach. An essential problem with this approach is that to keep the sample size small, the manufacturer risk and the consumer risk must increase [16]. The only way to lower manufacturer and consumer risk is to increase the sample size to possibly burdensome levels. This results in an inherent conflict for the design of a quality audit procedure which requires a fixed sample size.

The annual sample size required by CARB's Quality Audit Program is set at one percent of engine family production, at least until ten engines are tested in an engine family. A major effort by both CARB and the affected manufacturers has been to find ways to reduce the necessary sample size, resulting in a confusing array of statistically *ad hoc* modifications to the program. Upon recognizing the limitations of CARB's Quality Audit Program as a model for the NPRM's marine engine self-audit program, EPA initiated development of another approach.

In today's SNPRM, EPA is proposing to modify the proposed subpart F regulations to include a statistical procedure known as the CumSum procedure that will enable manufacturers to select engines at appropriate sampling rates for emission testing and will determine whether production line engines are complying with emission standards. CumSum procedures are used for the detection of changes in the average level of a process; the proposed procedure is useful both as an assessment tool for EPA and a quality control tool for engine manufacturers. The procedure is capable of detecting significant changes in the average level of a process, while ignoring minor fluctuations that are simply acceptable variation in the process.

Under the procedure, described in more detail below, manufacturers would select engines from each engine family at appropriate sampling rates for emissions testing. Testing would be required to be conducted in accordance with the applicable federal testing procedures for marine engines. The test results would be input to the appropriate CumSum equations, and the results of the procedure would indicate whether the engine family is in noncompliance.

1. Sampling Rates Required for the CumSum Procedure

Sample Size Calculation. At the start of each MY, manufacturers would begin to test each engine family at a rate of one percent, and then modify the testing rate according to a sample size equation. A manufacturer would determine the sample size necessary for newly-certified engine families by conducting two tests and then calculating the required sample size for the rest of the MY according to the Sample Size Equation below. For carry-over engine families, the manufacturer would determine the necessary sample size by conducting one test, then combining the test result with the last test result from the previous MY, and finally calculating the required sample size for the rest of the MY according to the Sample Size Equation below.

Sample Size Equation

where:

[15] Price Waterhouse, National Recreational Boating Survey: Final Report, June 30, 1992.

[16] Manufacturer risk is the risk that the quality audit program will detect that an engine family is in noncompliance, when the family is actually in compliance. Consumer risk is the risk that the quality audit program will fail to detect that an engine family is in noncompliance, when the family is actually in noncompliance.

N=Calculated sample size. N_{HC}, N_{CO}, and N_{NOX} are all calculated from each test result. The largest of the three becomes the official N which becomes the number of tests required for the remainder of the MY. N_{HC}, N_{CO}, and N_{NOX} are all recalculated after each test.

t_{95}=95 percent confidence coefficient. It is dependent on the actual sample size, n, and is defined in the table below. It defines one-tail, 95 percent confidence intervals.

SAMPLE SIZE AND ONE-TAIL CONFIDENCE COEFFICIENTS

n	t_{95}	n	t_{95}	n	t_{95}
2	6.31	12	1.80	22	1.72
3	2.92	13	1.78	23	1.72
4	2.35	14	1.77	24	1.71
5	2.13	15	1.76	25	1.71
6	2.02	16	1.75	26	1.71
7	1.94	17	1.75	27	1.71
8	1.90	18	1.74	28	1.70
9	1.86	19	1.73	29	1.70
10	1.83	20	1.73	30	1.70
11	1.81	21	1.72	∞	1.645

σ=sample standard deviation of the actual sample, where:

X_i=emission test result for an individual engine

x=mean of the actual sample

STD=emission standard or, if applicable, family emission limit (FEL)

n=The actual number of tests completed in an engine family

The calculated sample size, N, determines the number of tests required for the rest of the MY. Tests must be distributed evenly throughout the remainder of the MY. After each new test, the sample size is recalculated with the updated sample mean, sample standard deviation, and 95 percent confidence coefficient.

If at any time throughout the MY the calculated sample size for an engine family, N, is less than or equal to the actual sample size, n, and the sample mean, x, for each pollutant, is less than or equal to the applicable standard or FEL, the manufacturer may stop testing that engine family. But, if at any time throughout the MY the sample mean, x, for any pollutant, is greater than the applicable standard or FEL, the manufacturer must continue testing that engine family at the appropriate maximum sampling rate.

Manufacturers may elect to test additional engines for input into the Sample Size Equation, provided that testing of the additional engines is performed in accordance with the applicable federal testing procedures for marine engines.

Maximum Sample Rates. The maximum required sample size for an engine family (regardless of the result of the Sample Size Equation) is the lesser of three tests per month or one percent of projected annual production (distributed evenly throughout the model year). For example, if the Sample Size Equation produces a value of N = 252 for a family with annual production of 20,000 engines, a manufacturer may elect to test only three engines per month instead of:

(1) 21 per month, which would be required if 252 tests were distributed evenly throughout the MY, or

(2) 17 per month, if one percent of annual production were distributed evenly throughout the MY.

Although the Sample Size Equation may calculate sample sizes greater than the proposed maximum sample rates, EPA believes sample sizes greater than these maximum rates would be unnecessarily burdensome for manufacturers of marine engines. The proposed maximum sample rates adequately characterize the emission levels of the engine family.

2. Construction of the CumSum Equation

After determining the appropriate sample size using the Sample Size Equation, the manufacturer would construct the following CumSum Equation for each regulated pollutant for each engine family:

where:

C_i=The current CumSum statistic

C_{i-1}=The previous CumSum statistic. Prior to any testing, the CumSum statistic=0 (*i.e.* C_0=0)

X_i=The current emission test result for an individual engine

STD=The applicable standard or, if applicable, the FEL

$F=0.25 \times \sigma$ and is the reference value

After each test, C_i is compared to the action limit, H.

$H=5.0 \times \sigma$ and is the action limit, the quantity which the CumSum statistic must exceed, in two consecutive tests, before the engine family is determined to be in noncompliance. (it is a function of the standard deviation, δ)

σ=is the sample standard deviation and is recalculated after each test.

Following each emission test, manufacturers would update current CumSum statistics for each pollutant according to the CumSum Equation described above. Manufacturers would continue to update the CumSum statistics throughout the MY. (At no time throughout the MY are CumSum statistics reset to zero.)

Manufacturers may elect to test additional engines for input into the CumSum Equation, provided that testing of the additional engines is performed in accordance with the applicable federal testing procedures for marine engines.

3. Criteria for Determining Noncompliance

An engine family is determined to be in noncompliance if at any time throughout the MY, the CumSum statistic, C_i, exceeds the applicable action limit in two consecutive tests for the same pollutant.

Production line emission test results, as well as sample size calculations and CumSum calculations, would be electronically reported to EPA on a quarterly basis. The Agency would then review the test data, sample size and CumSum calculations to assess the validity and representativeness of each manufacturer's production line testing program. If a manufacturer were to determine that an engine family is in noncompliance, the manufacturer would be required to report the emission test results and the appropriate Sample Size and CumSum Equation calculations within two working days of such a determination.

If an engine family is determined to be in noncompliance, or a manufacturer's submittal to EPA reveals that production line tests were not performed in accordance with applicable federal testing procedures, EPA may suspend or revoke the manufacturer's certificate of conformity in whole or in part for that engine family. The suspension or revocation will not occur before fifteen days after a noncompliance determination is made. During this fifteen day period, EPA will coordinate with the manufacturer to facilitate the approval of the required production line remedy in order to eliminate the need to halt production, if possible. The manufacturer must then address the engines produced prior to the suspension or revocation of the certificate of conformity. EPA may reinstate a certificate of conformity subsequent to a suspension, or reissue one subsequent to a revocation, after the manufacturer demonstrates that improvements, modifications, or

replacement have brought the engine family into compliance. The proposed regulations include provisions for a hearing in which a manufacturer may challenge EPA's decision to suspend or revoke a certificate of conformity based on the CumSum procedure.

The Manufacturer Production Line Testing Program would be the main production line emission test program for marine engines. The Selective Enforcement Auditing (SEA)[17] program that was proposed in the NPRM will serve a spot-check function and enable EPA to evaluate testing practices used by the manufacturer, follow up on concerns reported to EPA, and address any configurations not covered by manufacturers in their production line testing program.

EPA realizes that the standard deviation, σ, of an engine family is an important aspect of the production line testing program. EPA intends to employ accurate engine family standard deviation in the CumSum Equations. The Agency requests comment on all aspects of the proposed production line testing program and specifically the appropriateness of the values chosen for the variables in the Sample Size and CumSum Equations. For more information on the derivation of the Sample Size and CumSum Equations, the selection of appropriate variables, and some examples of the CumSum Procedure, see ''*The Cumulative Sum Procedure*'' document in the docket.

4. Changes in FELs and Other Running Changes

During the course of a MY, manufacturers may change certification FELs up or down depending on comfort level or engineering decisions. Manufacturers may also make changes to the engines to increase performance or reduce emissions. The Agency proposes to handle these changes in production with respect to the CumSum procedure as described below.

Changing an FEL (Actual Engine Not Changed). All data accumulated during that MY but prior to the FEL change would be recalculated with the new FEL. New sample sizes would be calculated, and testing would be continued or halted as required. The CumSum statistic would also be recalculated with the new FEL and would be evaluated with respect to a new action limit. Testing and updating of the sample size and CumSum statistic would continue until testing could be halted as a result of the sample size calculation, a noncompliance decision, or the end of the MY.

Changing an FEL (Actual Engine Changed). All data accumulated during that MY but prior to the FEL/engine change would be left as is. Sample sizes would now be calculated by inserting the new FEL into the Sample Size Equation. The CumSum Equation and action limit would be updated to reflect the new FEL. The CumSum statistic would then be calculated by the new equation and would be evaluated with respect to the new action limit. Testing and updating of the sample size and CumSum statistic would continue until testing could be halted as a result of the sample size calculation, a noncompliance decision, or the end of the MY.

No Change to an FEL (Actual Engine Changed). No changes would be made to any of the equations or any of the accumulated data. This type of action is considered a typical day-to-day change on the production line that should be evaluated by the Sample Size and CumSum Equations.

5. Old Technology Engines

EPA proposes to waive production line testing requirements for any old technology OB/PWC engine family through MY 2003. In MY 2004 and MY 2005, any manufacturer of an old technology OB/PWC engine family may request, in writing, an exemption from the requirements to perform production line testing. EPA will have the discretion to grant a waiver if the Administrator determines that the engine family will be phased out of production by MY 2005. EPA will review requests for exemptions and upon granting appropriate requests will prepare and submit to the manufacturer a memorandum of exemption, which will set forth the terms and conditions of the exemption. The Agency requests comment on the appropriateness of exempting old technology engine families being phased out within six years of the effective date of the rulemaking, and of offering a discretionary waiver to such engine families in MY 2004 and MY 2005. Refer to section IV.B.3. for additional discussion of this flexibility and the definition of ''old technology OB/PWC.''

6. Effective Date of the CumSum Procedure

Since publishing the NPRM, it has come to EPA's attention that OB/PWC engine manufacturers may need significant time to prepare their production facilities with all of the necessary equipment and resources to comply with the production line testing requirements. EPA is proposing that the requirements for the production line testing program become effective one year later than proposed in the NPRM. Under this proposal, marine engine emission standards, certification requirements, and in-use testing provisions would still go into effect beginning with MY 1998. Production line testing requirements would go into effect beginning in MY 1999. This proposal offers some relief to manufacturers while making sure that emission standards and in-use compliance are not delayed. Manufacturers could voluntarily submit production line testing data to EPA during MY 1998. The Agency requests comment on the appropriateness of this one-year delay in the imposition of production line testing requirements.

7. Request for Comment

Although EPA is proposing modifications to the proposed Production Line Testing Program to greatly reduce its burden as outlined above, EPA also requests comment on the appropriateness of omitting such a program from the final rule. EPA believes that the Production Line Testing Program may be the best testing activity which can detect whether a manufacturer has failed to translate an engine design successfully into mass production while the manufacturer still is producing that design.

This Program has the ability to catch and offer a manufacturer the opportunity to correct emission related problems early in an engine's life, thus reducing a manufacturer's in-use liability. EPA believes that the proposed Production Line Testing Program would also serve the following additional purposes: (1) ensure that manufacturers follow precisely the emissions test procedures listed in the CFR, (2) ensure that the manufacturers' test equipment accurately measure emissions, and (3) ensure that production engines are in conformity with applicable Federal emission requirements as they come off the assembly line and that individual engines tested conform to applicable family emission limits.

EPA believes that production line testing is especially important for a rule where certification is built around an averaging, banking, and trading program. Manufacturers will be producing engines which generate emission credits that can be bought or sold or used to offset other families produced by the same manufacturer. EPA believes it is important to ascertain that actual production engines achieve proper certification family emission

[17] SEA is a program in which EPA selects engines from one engine family configuration, directly from the production line, for emissions testing.

limits to ensure that credits are bona fide and real.

However, EPA is considering whether the information obtained from this program is redundant with the information obtained from the proposed In-Use Testing Program. The government is generally attempting to reduce regulatory burden by eliminating all programs that generate redundant information and information that is not cost-effective. EPA requests comment on the relative importance of the information gleaned from the Production Line Testing Program and compliance measures associated with the In-Use Testing and In-use Credit Programs. EPA is considering the option of not finalizing the Production Line Testing Program provided that the In-Use Testing and In-Use Credit Programs are finalized. However, because EPA thinks production line testing generates relevant data and is important, EPA also requests comment on other options such as having production line testing in the early years of the program and then relaxing or eliminating production line testing as the in-use program generates more data.

Should EPA opt not to finalize a Production Line Testing Program, EPA requests comment as to whether SEA should become a more important programmatic emphasis. EPA requests comment on whether SEA regulations (i.e., Part 91, Subpart G) should be finalized for OB/PWC if commenters do not think SEA should become a more important programmatic emphasis. Even if the SEA regulations proposed in the NPRM were not finalized, EPA would retain authority under Sections 206(b)(1) and 208 of the CAA to test or require testing of newly manufactured engines and to inspect production facilities and processes to determine whether a manufacturer is complying with the information submitted for certification. Further, EPA would retain authority under Section 206(b)(2) of the CAA to suspend or revoke the certificate for engines that do not conform with applicable emission standards. However, without SEA regulations, the SEA process could become more cumbersome. EPA seeks comments on both the advantages and disadvantages of finalizing Subpart G, Part 91.

F. In-Use Credit Program

The Agency is proposing an in-use credit program for marine OB/PWC engines. This program would not be a substitute for the proposed averaging, banking, and trading (ABT) provisions used for certification purposes, but would be offered as a separate program that may be used in conjunction with the certification ABT provisions. The in-use credit program is designed to reduce cost without reducing environmental benefits by providing manufacturers with flexibility in meeting the proposed standards for each pollutant in-use. Participation in this proposed program would be voluntary.

The flexibility that EPA proposes to provide in the in-use credit program is necessary for a number of reasons. In the event that engine families fail in-use testing, EPA believes that recalling the nonconforming engines would be particularly burdensome and impractical for this industry, mainly due to the difficulty of tracking the nonconforming engines. If registration with a government entity occurs, it is the vessel that is registered, not the vessel's engine; manufacturers of marine engines do not typically know in what vessels their engines are installed. Tracking the engines would thus be cumbersome and difficult, especially because manufacturers estimate that the owner moves or the vessel is typically sold about four years after the initial purchase. Therefore, recalling the engines would likely require substantial resources, yet not be highly effective in actually remedying the excess emissions.

The Agency believes it has the authority to promulgate this in-use credit program under the circumstances. The CAA provides that the marine engine emission standards, when finalized, shall be subject to Section 207 of the Act, ''with such modifications of the applicable regulations * * * as the Administrator deems appropriate.'' 42 U.S.C. 7547(d). Section 213 requires engines to comply with emission standards when in actual use throughout their regulatory useful lives, and Section 207 requires a manufacturer to remedy in-use nonconformity when EPA determines that a substantial number of properly maintained and used engines fail to conform with the applicable emission standards. 42 U.S.C. 7541. Once EPA makes this determination, recall would be necessary to remedy the nonconformity. However, EPA believes that, under the circumstances here, where it has been proposed that OB/PWC marine engines could use ABT to comply with the emission standards at certification (see 59 FR 55930), it is appropriate not to make a determination of substantial nonconformity where a manufacturer uses ABT to offset in-use noncompliance. Doing so is also appropriate because it is expected that recall would be impractical and largely ineffective. Thus, the CAA offers EPA the discretion to not make a Section 207(c) determination of substantial nonconformity where a marine engine manufacturer uses ABT to offset any noncompliance with the statute's in-use performance requirements. Though the language of Section 213(d) is silent on the issue of averaging, it allows EPA considerable discretion in determining what modifications to the on-highway regulatory scheme are appropriate for nonroad engines.

In this current proposal, in-use credits would be based upon in-use testing conducted by the manufacturer as discussed previously in the NPRM. For a given engine family, the in-use compliance level (CL) would be determined by averaging the results from in-use testing performed for that engine family. If the in-use CL is below the applicable FEL to which the engine family is certified, the manufacturer could generate in-use credits for that engine family. If the in-use CL is above the applicable FEL, the engine family would experience a credit deficit. In any given year, a manufacturer may use in-use credits to average against excess in-use emissions of another engine family from the same MY, to bank for use in future model years, or to trade to other manufacturers. If a manufacturer completes testing for a given MY and is in a deficit situation, it will not be allowed to carry the deficit over to the next MY. To remedy a deficit situation, a manufacturer could purchase credits from another manufacturer or, upon EPA approval, test additional engine families of that MY beyond the 25 percent proposed in the NPRM for the in-use testing program to generate additional credits.[18]

However, EPA is considering allowing a manufacturer to carry-over a deficit to the next MY in the beginning of the phase-in period. Specifically, EPA is considering allowing carry-over during the first three years of the phase-in if no credits are available for purchase to remedy the deficit. EPA requests comment on the appropriateness of allowing a deficit carry-over, on whether it should allow this carry-over only when no credits are available for purchase or if other circumstances are appropriate for carry-over, and on whether the first three years of the phase-in period or some other time period is an appropriate time period for such a deficit carry-over.

The Agency is designing the in-use credit program around three principles.

[18] However, if the additional testing discovers an engine family that was in noncompliance with its FEL, the result would be handled as if it were a failure of the mandated in-use testing requirement of up to 25 percent of a manufacturer's engine families.

First, the in-use testing program will assess whether each manufacturer is achieving the environmental benefits intended by the standards when the engines are in-use. Second, manufacturers will be provided with strong incentive to maintain the standards in-use which will further encourage in-use compliance. Finally, the in-use credit program will provide flexibility and reduce the burden on manufacturers by allowing them an option to address in-use noncompliance in a way that EPA agrees would avoid a determination of nonconformity under § 207(c) of the Act, and thereby avoid a recall.

Credits associated with the certification ABT program would not be interchangeable with credits generated or used in the in-use credit program. Positive certification credits are generated when the FEL is set below the applicable standard. An in-use nonconformity occurs when the CL, which is the emission level determined by in-use testing for an engine family, is found to be above the FEL. Allowing a manufacturer to remedy an in-use nonconformity with positive certification credits generated by the same or another FEL setting would be a dubious policy. Such a policy does not appear to encourage manufacturers to make adequate effort to declare FELs during the certification process that predict in-use emission levels to the fullest extent possible. The Agency is concerned that if the in-use test results simply updated the certification FEL then manufacturers would attempt to set certification FELs that the engine would likely exceed in-use, because a manufacturer would have a chance after in-use testing to change the FEL if it had been set too low at certification. In this way, the manufacturer would generate more certification credits than the engine family actually should receive and would have already have used those credits to offset dirtier engines. This is referred to as ''gaming'' the ABT provisions by ''shaving'' the FELs. Therefore, to preserve the integrity of both the certification and in-use ABT programs and maintain accountability for manufacturers to meet their stated FELs in certification, production line, and in-use testing, EPA is proposing to restrict credit use by separating in-use credits from certification credits. The Agency requests comment on the necessity of separate certification and in-use ABT sets, especially with respect to providing the incentive for manufacturers to produce engines that meet designed emission levels in-use and to choose a certification FEL which represents in-use emission levels.

An engine family's in-use CL would be determined by averaging the results of testing in-use engines, as discussed in the NPRM. The test results would be rounded to the number of decimal places contained in the applicable emission standard or FEL, expressed to one additional significant figure. Rounding would be done in accordance with ASTM 29–90, ''Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.'' The CL would be compared to the applicable FEL to determine if the engine family will generate or require credits.

In EPA's experience with the on-highway heavy-duty ABT program,[19] manufacturers have changed FELs during the MY through running changes. The Agency would not want to restrict the ability of manufacturers to lower FELs when installing cleaner technology during the MY, or to raise FELs if emission data is obtained on an engine family indicating an inadequate safety margin. However, EPA also believes that an in-use testing program that tests only one declared FEL during a MY would not be representative of an engine family having multiple FELs throughout that MY. In a case where a manufacturer has changed the FEL of an engine family during the MY because of a design change, EPA may designate which FEL of the engine family is to be tested. If an in-use failure occurs for this FEL designation, EPA may request in-use emission results from other FEL designations within this engine family to ensure that the noncompliance is confined only to that portion of the engine family with the audited FEL. A manufacturer can also change their certification FEL to increase its safety margin or generate extra credits without a design change. In such cases, if a chosen FEL of an engine family were to fail in-use testing, the emission results would apply to the entire production of the engine family, encompassing all of the FEL changes. Since in this case only the FEL was changed, and not the design of the engine family, EPA believes it is reasonable to apply the emission results of in-use testing to all the FEL settings of the engine family.

Separate calculations of credits would be required whenever an engine family contains multiple FELs. Therefore, it would be possible for an engine family (with multiple FELs) to both generate and require in-use credits as a result of in-use testing. The Agency requests comment on its proposed way of handling in-use testing of engine families with a number of declared FELs. In particular, EPA seeks comment whether it should require a minimum number of in-use tests for each FEL (or change in emissions characteristics) and if so, what number of tests would be appropriate.

To provide a safeguard against potential environmental detriment, EPA believes that it should only grant in-use credits for amounts of emissions reductions in which EPA has a significant degree of confidence. Thus, EPA proposes to take into account the uncertainty in the in-use emissions tests when calculating credit generation by relating credit generation to the statistical accuracy of the tests. The ultimate purpose of testing a set of engines in-use is to estimate the average emissions rate of all of the engines in that family over their useful lives. For many reasons, the results of any one test of any one engine will generally constitute a fairly uncertain measure of fleet-wide average emission rates; various random factors in the way an individual engine is manufactured and used will cause its emission rate to deviate from the average of its engine family, and other random factors may cause the results of any one test of that engine to vary.

According to the provisions in the NPRM for in-use testing, a manufacturer could pass an in-use audit after the first four tests of an audit. However, if another manufacturer failed the first four tests in an audit, it would continue testing to ten tests in order to make a compliance determination. If both manufacturers simply took the mean of the tests associated with each of these audits, the two manufacturers would not be generating and using credits for in-use emissions levels with the same degree of certainty.

The Agency believes that the number of credits a manufacturer may generate should be related to the number of tests performed for that audit, because the more tests that are performed, the more certain EPA and the public are that the mean of those test results is near the true average for that engine family. In addition, an imbalance of certainty exists between credit generation and credit usage. This arises from the fact that manufacturers would be able to pass an audit and generate credits in four tests (or two for small volume manufacturers), but might not fail an audit or be required to use credits until ten tests were performed. The average of the ten tests will tend to be closer to the correct mean of the engine family. Thus, while EPA will award some credits for engine families that appear to be cleaner

[19] 40 CFR part 86 (subpart A).

than their FEL on the basis of four tests, progressively more credits will be awarded if the compliance level is based on six, eight, or ten tests. (See Figure 1 below.) EPA requests comment on this proposal. In particular, EPA requests comment on the appropriateness of the magnitude of the relative sample size adjustments presented in Figure 1, any preferred adjustments, as well as this approach of adjusting the credits based on the amount of testing done to determine the CL.

FIGURE 1

No. of engines tested	2*,4	6	8	10
Credits earned (AF**)	.5	.75	.9	1

* Small Volume Manufacturer.
** Adjustment factor.

If a manufacturer were to pass an in-use audit with the first four tests but wanted to participate in the voluntary in-use credit program, it would be allowed to test ten engines to maximize the credits it would generate.

EPA is also considering a requirement that if in-use credits are generated and used from an engine family with a CL below the applicable emission standard or FEL, then the CL would become an enforceable limit for the engine family that generated the credits. This condition on the generation and use of credits would help ensure that the emissions reductions on which they are based would be real, permanent, and enforceable. EPA has consistently used such an approach before approving the use of credits for emissions reductions. Under such a system, an engine family would have to continue to meet the CL on which credits were based if it were tested again in-use. If it did not, then in-use credits would be required to avoid noncompliance. It is important to note that this would not affect or change in any way the generation or use of credits during certification.

The Agency proposes to require manufacturers to use in-use credits at a higher rate than the credits were generated. While EPA believes that it is important for manufacturers to have the option of remedying in-use problems through in-use averaging rather than through much more costly and uncertain recall actions, it would be better to not have in-use failures at all. EPA wants to maintain a strong incentive for manufacturers to produce engines that pass their in-use audits, and an incentive to achieve that is to require manufacturers who must use in-use credits to do so at a greater rate than the credits are generated. Therefore, EPA proposes that manufacturers use credits at a rate of 1.2 to 1. In other words, EPA is proposing that manufacturers offset 120 percent of the negative credits identified by the in-use testing program with positive credits. In this way, the in-use credit program will achieve an additional environmental benefit when manufacturers underestimate FELs and will provide an added incentive to manufacturers to adequately identify expected full useful life emission levels when choosing the certification FEL. This would be a penalty for underestimating certification FELs. EPA requests comment on the appropriateness of this penalty, including whether the penalty should be larger, smaller, or not imposed at all.

This penalty may result in a greater environmental benefit than accounted for in the cost-benefit calculation. However, EPA is not taking a benefit in that calculation, because it expects engines to comply in-use with the certification FEL. In other words, EPA expects there will be few engine families that need to use in-use credits.

The credit calculation formula is as follows: Credits earned per engine family=

FEL=the pollutant specific family emission limit for the engine family in g/kW-hr.

CL=compliance level of the in-use testing in g/kW-hr.

SALES=the number of engines in the engine family sold in the U.S. calculated per the certification rules which are the ''first delivery'' concept.

Power=the average power of an engine family in kW. (sales weighted)

AF=adjustment factor for the number of tests conducted

U(t)=use in hours per year at age t, defined as

$$U(t) = 1.3\mu_{use} - \left(\frac{1.3\mu_{use} - 0.7\mu_{use}}{2\mu_{life}}\right)t$$

where

t=age of the engine in years

μ_{use}=mean use in hours per year, usage rate specific to the application; for outboard engines, hours per year = 34.8; for personal watercraft, hours per year = 77.3; for sterndrive/inboard engines, hours per year = 47.6 μ_{life} = the mean life in years of the engine; μ_{life}=10 for personal watercraft and for outboards

$$\mu_{life} = 41.27 \times \left(\frac{kW}{0.746}\right)^{-0.20}$$

S(t)=the cumulative fraction survived at time t

where μ_{life} is the mean life in years of the engine; μ_{life}= 10 for personal watercraft; and for outboards

$$e^{-(t \times 0.906/\mu_{life})^{4.0}}$$

EPA requests comment on the use of the average power rating of an engine family. For certification provisions, EPA proposed to use the minimum power rating for engines below the applicable emission standard and the maximum power rating for engines above the applicable emission standard. EPA requests comments in light of the proposed certification requirements on power rating.

The Agency proposes that results of in-use testing of an engine family may apply to similar engine families from other model years, provided the engine families had received carry-over certification because the emission characteristics of the engine family had not changed. Therefore, if a carry-over engine family was tested and the CL was below the FEL, the engine family could earn credits for a total of up to four model years (the MY of the engine family tested, plus the two model years prior and the MY after: ''minus two, plus one''). However, if the CL was above the FEL, then the engine family would owe credits for a total of up to four model years.

For example, in the year 2002 the Agency may request testing of a manufacturer's MY 2001 engine family, which has received carry-over certification from 1998–2002. The manufacturer would conduct the audit. In this example, suppose the CL for the engine family were found to be below the FEL. Since the emission results of an audit of a carry-over engine family can apply to two previous years and one subsequent year of the MY of the engine family tested, this engine family would earn credits for the model years 1999, 2000, 2001, and 2002. Similarly, if the CL was greater than the FEL, it would require credits for those same years. Any generated credits would be identified as MY 2001 credits for recordkeeping purposes.

The Agency proposes to implement this carry-over by applying test results from a given MY engine family to the corresponding engine family from other model years that involve carry-over certification for a number of reasons. The Agency has limited itself to requiring a manufacturer to audit only

25 percent of its engine families in any given MY. It would take at least four years of in-use auditing to cover all of a manufacturer's production. In fact, more than four years might be required, since manufacturers are allowed to drop and add engine families as their product line changes. Accordingly, the Agency believes it is reasonable to apply test results from an audit of an engine family that involves carry-over certification to other MY production. For example, a carry-over engine family that has been produced for eight years may pass an in-use audit in year one and fail in year eight. The failure may have occurred in years two through seven. It appears reasonable to EPA that a manufacturer's liability be limited in such situations because some engine families may be produced for many years before they are tested in-use. The four year proposal in this SNPRM was chosen as a compromise between unlimited MY liability and no liability beyond the specific MY that was audited.

In the administration of the Agency's in-use motor vehicle test program, the Agency has had occasion to be persuaded that an in-use remedy should not apply to a subclass of a given engine family or to a previous MY of a family that involved carry-over certification. The manufacturers have generally submitted test results and other information to support their cases. The Agency believes that a similar approach should apply to the marine in-use credit program. It would provide an opportunity for reductions in the amount of credits a manufacturer might owe for engine families that have been carried over for several years due to the automatic application of the ''minus two, plus one'' carry-over certification rule to credit calculations. The Agency anticipates using this approach infrequently, but believes it should be available due to EPA's experience in the motor vehicle in-use testing program.

The Agency is proposing unlimited life for in-use credits. Because in-use credits are generated based on real in-use test results, the validity of the credits are not in question. With the concern about validity of credits removed, an economic rationale supports unlimited life. The banked positive credits represent emission reductions beyond the requirements of the regulations, or ''excess credits''. The present value concept applies to benefits (*e.g.*, emission reductions) as well as cost. In other words, just as a dollar today is worth more than a dollar tomorrow, so too an environmental benefit today is worth more than a benefit tomorrow. However, EPA is not proposing to adjust upward the amount of credits banked to appropriate future value as would be required to properly account for present value with each year the credit is banked. Therefore, it is actually more beneficial to the environment for manufacturers to use the ''excess credits'' banked for exceedances in future years, because the banked credits inherently have a higher present value. Therefore, using the banked positive credits with a higher present value, although they are unadjusted, to offset negative credits in a future year yields a net environmental benefit because the banked credits have a real value higher than the value of the future year's negative credits. In this instance, the net environmental benefit is a ''shadow'' benefit insofar as it is philosophically valued yet unaccounted for.

The Agency is proposing that the United States sales figures used in the marine certification program for each engine family would also apply to this in-use credit program. The Agency sees no need and little benefit to conducting two separate analyses of the engine sales in the United States.

In order for EPA to determine manufacturer in-use compliance, the manufacturer would be required to submit an end of the MY in-use testing report. This report would have to be submitted within 90 days of the end of the in-use testing period for a given engine family for each MY, or at the same time as the final certification ABT report, whichever is later. The end of the MY in-use testing report would contain the calculated credits from all the in-use testing conducted by the manufacturer for a given MY. Also, within ten days after the end of an in-use audit for an engine family, the manufacturer would submit a report indicating the test results and the calculated CL for the engine family.

To ensure that the environment would not be adversely affected, EPA proposes that manufacturers may not enter into a deficit situation as a result of credit trading with other manufacturers. For the same reason, manufacturers may not carry over deficits from one MY to another. A manufacturer must obtain sufficient credits to meet its needs each MY, whether those credits are generated by its own engine families or obtained through trading. Trading may occur only after the manufacturer's in-use testing for that MY has been completed, and a manufacturer may only trade to another manufacturer credits that are in the bank at that time.

The integrity of the proposed marine in-use credit program depends on accurate recordkeeping and reporting by manufacturers and effective tracking and auditing by EPA. Failure of a manufacturer to maintain the required records would result in the certificates for the affected engine families being void *ab initio*. Violations of reporting requirements could result in a manufacturer being subject to penalties of up to $25,000 per day of violation as authorized by sections 205 and 213 of the CAA.

The Agency has prepared a supplementary document, available from the docket for this rulemaking, which discusses in-use credit issues in more detail. This document includes examples of calculations of credits in a variety of situations.

The proposed regulations include hearing provisions which allow the manufacturer to challenge EPA's audit of in-use credit calculations and the manner in which those credits were used/generated.

G. Labeling Requirements

As described in the NPRM, each certified engine must bear a label indicating the engine family name and the standard or FEL to which it is certified. Any engine imported into the United States in a vessel must have an engine which also complies with the labeling requirements.

The Agency considered proposing in this SNPRM the idea of a system of labeling engines (or, possibly, watercraft in the case of SD/I applications) that would encourage purchase of the cleanest engines and discourage purchase of the highest-polluting engines. Such a system could be a marketing tool. For example, the cleanest engines could be designated as ''green engines'' or engines which are most environmentally friendly. The highest-polluting engines could also be designated in such a way as to let the consumer know that there are cleaner engines available for purchase. EPA proposed a ''green engine'' label in the NPRM. However, EPA did not propose to label engines that are dirtier. EPA seeks here to elicit comments on a system which would also identify which engines are the dirtier engines. One option would be to identify all engines that do not meet the MY 2006 average emission standard as a ''dirty engine.''

EPA does not intend to go forward with such a proposal in this rulemaking. Nevertheless, EPA requests comment on the advisability of proposing labeling provisions of this type at some later date for use in conjunction with educational outreach to consumers.

H. Addition of Competition Exclusion and Revised Criteria for National Security Exemption for Marine Rule and Other Nonroad Rules

The Agency is proposing to amend or re-propose certain provisions of the existing land-based nonroad CI (>37 kW) rule,[20] the existing nonroad SI (≤19 kW) rule,[21] and this proposed marine engine rule, in order to make the exclusions and national security exemptions (NSEs) in these rules more closely follow EPA's long-standing treatment of exclusions and NSEs in the on-highway motor vehicle program.

In the motor vehicle program, the regulations exclude from their scope any vehicle that exhibits features which render its use on a street or highway unsafe, impractical or highly unlikely, including features ordinarily associated with military combat or tactical vehicles such as armor and/or permanently affixed weaponry. 40 CFR 85.1703. This exclusion criterion is grounded in the definition of ''motor vehicle'' in the CAA, which restricts the term to vehicles that are designed for transporting persons or property on a street or highway. See Section 216(2) of the CAA.

The statutory definition of ''nonroad engine'' provides no comparable basis for a combat exclusion. See Section 216(10). However, EPA believes that the national security exemption set forth in Section 203(b)(1) of the Act allows EPA to grant a regulatory exemption to nonroad engines that exhibit ''combat features.'' There are many potential uses of nonroad engines in military and national defenses settings. Accordingly, the Agency proposes to include an automatic national security exemption for nonroad engines, nonroad vehicles, and nonroad equipment that exhibit combat features in the two existing nonroad rules (for CI engines greater than 37 kW and SI engines less than or equal to 19 kW), and in the marine engine rule. All nonroad engines vehicles, and equipment within the scope of the regulations which exhibit the combat features described in the regulations would automatically enjoy an NSE; manufacturers of such products would not be required to apply for this exemption.

While the statutory basis for the automatic nonroad national security exemption differs from the statutory basis for the motor vehicle combat exclusion, the end result is substantially the same. EPA believes that establishing an automatic NSE for the nonroad programs accords with Congressional intent to offer a national security exemption and decreases significantly the burden for manufacturers and EPA that would exist if EPA limited the availability of an NSE to those manufacturers who apply to EPA and receive approval, as occurs in the motor vehicle program. See 40 CFR 85.1708.

EPA also proposes that manufacturers who produce a nonroad engine, nonroad vehicle, or nonroad equipment which does not meet the ''combat features'' criterion, but may otherwise require an NSE, may apply to the Agency for an NSE in a manner similar to the national security exemption process offered in the motor vehicle program. See 40 CFR 85.1703. (A slightly different version of the proposed regulatory text on this issue already appears in Parts 89 and 90.) Additionally, the Agency proposes to promulgate a requirement that EPA maintain a publicly available list of NSEs granted to nonroad engines, vehicles, and equipment by EPA after manufacturer application.

Finally, EPA proposes to add a general competition exclusion to the marine rule; the NPRM had limited the competition exclusion to imported vessels. EPA believes this revised proposal accords with the CAA's definition of nonroad engine, which excludes nonroad engines used in a vehicle that is used solely for competition. See Section 216(2) of the Act.

I. Engine Family Definition

The Agency proposed an engine family definition in the NPRM that allowed the manufacturers flexibility to further segregate engine families beyond the proposed criteria, but did not allow manufacturers the flexibility to consolidate engine families. Comments in response to the NPRM indicated that it would be appropriate to include flexibility allowing manufacturers to consolidate engine families.

It is acceptable to consolidate engine families, particularly SD/I engine families, beyond the criteria proposed in the NPRM. For instance, SD/I engines may be marinized by different manufacturers yet have the same basic engine block produced by, for example, General Motors. The emission characteristics should be similar across most marinized engines with the same engine block, even if produced by other manufacturers. Generally, EPA would not expect the emission characteristics to be similar in the degree to which EPA expects on-highway engine families to be similar. The degree of emission control that is necessary for on-highway applications requires that the concept of ''similar'' emission characteristics be more narrowly defined. For these reasons, EPA is proposing that engines differing in one or more of the characteristics proposed to define engine families (*i.e.*, combustion cycle, cooling mechanism, cylinder configuration, number of cylinders, catalytic converter, thermal reactor characteristics) may be grouped in the same engine family if the manufacturer can show that the in-use emission characteristics are expected to be similar.

J. Harmonization With the International Maritime Organization

As stated in the NPRM, EPA requests comment on harmonization with the International Maritime Organization (IMO) proposal to regulate emissions from new oceangoing vessels. A copy of this IMO proposal is located in the docket. EPA intends on harmonizing with the IMO emission standard levels for compression-ignition marine engines. EPA requests comment on specific ways to harmonize. EPA's NPRM proposed an average NO_X emission standard of 9.2 g/kW-hr, while the IMO NO_X emission standard varies from 9.8 g/kW-hr to 17.0 g/kW-hr, depending on engine speed. EPA's proposed NO_X emission standard is an average in which the engine can be either below or above, so long as the emissions above the standard are compensated with emissions below the standard. On the other hand, the IMO NO_X emission standard is a cap type standard that all engines must be less than.

Although EPA is not prepared to re-propose a different NO_X emission standard, there are several alternatives that seem to exist that would result in a harmonized NO_X emission standard structure with IMO. One alternative would be to adopt the IMO NO_X emission standard instead of the standard proposed in the NPRM. This would result in a cap type standard at the same NO_X levels as the IMO NO_X emission standard across the engine speed range. A second alternative would be to retain the proposed average NO_X emission standard of 9.2 g/kW-hr and to also adopt the IMO emission standards across the engine speed range as a cap which no engine could exceed. In this way, clean engines would be encouraged through the market for emission credits. Third, it may be appropriate to determine an engine speed or engine power output cutoff point. Such a point could be used to apply the IMO cap emission standard to all engines of high horsepower and low

[20] 59 FR 31306 (June 17, 1994); see also 40 CFR Part 89.

[21] 60 FR 34582 (July 3, 1995); to be codified at 40 CFR Part 90.

and medium speeds. On the other hand, high speed engines with lower horsepower could meet the 9.2 g/kW-hr average standard proposed with the 9.8 g/kW-hr IMO level as a cap which no engine could exceed. This may be appropriate to encourage clean technology and because the high speed engines are used in other nonroad applications in addition to marine. Finally, EPA must determine whether and how to harmonize each of the emission standards for HC, CO, PM and smoke set forth in the NPRM with IMO's NO_X-only emission control approach. With respect to each of these standards, EPA could retain the standard as proposed in the NPRM, drop it, or alter it in some way.

EPA requests comment on ways to harmonize with the IMO emission standards, including the alternatives mentioned here and any alternatives that commenters can devise to integrate the standards. EPA thinks that harmonization is an important issue and intends on finalizing a harmonized NO_X emission standard. EPA requests comment on the extent to which it is appropriate for EPA to harmonize the enforcement requirements in its final rule with the enforcement scheme proposed in the IMO regulation. For example, EPA may finalize its rule such that to the extent that ship owners are liable for engine emissions under the IMO's finalized Marpol Annex, EPA may exercise its discretion under the CAA to not hold engine manufacturers liable for the same emissions. Similarly, EPA would expect to revise its regulations to the extent necessary to harmonize the enforcement scheme with that of the IMO's finalized Marpol Annex However, EPA is concerned about the potential for a regulatory gap between the time EPA's regulation is implemented and the time when IMO's Marpol Annex would be implemented. EPA is considering applying harmonized or integrated emission standards until IMO's Marpol Annex is finalized so that EPA's regulation achieves emission reductions according to the schedule proposed in the NPRM (i.e., implementation of emission standards beginning in MY 1999).

Finally, EPA is considering whether its test procedures proposed in the NPRM are appropriate for CI engines above 1500 kW. EPA's requirements are for test bed testing only, where as the IMO's Marpol Annex includes an option for testing such engines on-board vessels. EPA requests comment as to whether EPA test procedures are or should be harmonized with IMO test procedures, including details regarding any changes that are needed to bring EPA's procedures in harmony with the proposed IMO procedures.

V. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this SNPRM. While EPA is not publishing the proposed regulatory language, EPA welcomes comment on it. The proposed regulatory language can be found in the docket, or can be requested from EPA on a floppy disk, or can be retrieved from the TTN (see information in section I. of this preamble). Commenters are especially encouraged to give suggestions for changing any aspects of the proposal that they find objectionable. Comments are also encouraged to identify those aspects of the proposal that they favor, since EPA may finalize some, but not all, of the proposals contained in this Notice. Also, commenters are encouraged to offer additional comments on the proposals contained in the NPRM should the proposals set forth in this SNPRM affect their views of the NPRM proposals. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–92–28 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

As noted above (see **DATES**), EPA will hold a public hearing on this SNPRM on February 22, 1996, if EPA receives from any party a request to testify at the hearing. Any person desiring to present testimony at the public hearing must notify the contact person listed above of such intent no later than February 20, 1996. The contact person should also be given an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first served basis. A sign-up sheet also will be available at the registration table the morning of the hearing for scheduling testimony.

The Agency suggests that approximately 50 copies of any statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least five days before the scheduled hearing date, in order to give EPA staff adequate time to review such material before the hearing. Advance copies should be submitted to the contact person listed.

If a hearing is held, the official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–92–28 (see **ADDRESSES**).

The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

VI. Administrative Requirements

A. Reporting and Recordkeeping Requirements

The information collection requirements in the NPRM were submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA prepared eight Information Collection Request (ICR) documents for the NPRM. Copies of the ICR documents may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St. SW. (mail code 2136), Washington, DC 20460 or by calling (202) 260–2740.

The eight ICR documents that have been prepared are:

EPA ICR document No.	Type of information
1722.01 ..	Certification/AB&T.
282.07	Emission Defect Information.

EPA ICR document No.	Type of information
1723.01 ..	Importation of Nonconforming Engines.
1724.01 ..	Selective Enforcement Auditing.
0012.08 ..	Engine Exclusion Determination.
0095.07 ..	Precertification and Testing Exemption.
1725.01 ..	Manufacturers' Assembly Line Testing.
1726.01 ..	Manufacturers' In-use Testing.

Each ICR document estimates the public reporting, recordkeeping, and testing burden for collecting the specified information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. In the NPRM, the Agency estimated that the public burden for the collection of information for all the ICRs would average approximately 6,050 hours annually for a typical engine manufacturer. The hours spent by a manufacturer for information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, emissions defects, etc.

OMB originally denied all the ICRs that EPA submitted with the NPRM. OMB has subsequently approved two of these (1723.01, for Importation of Nonconforming Engines and 0012.08, for Engine Exclusion Determination), but the rest have not been approved as of the date of publication of this SNPRM. Without OMB approval of these information collection requests, EPA cannot implement the regulations once finalized. Therefore, EPA submitted new information collection requests in conjunction with this SNPRM that indicate that the reporting and recordkeeping requirements of the proposal as a whole are significantly less than estimated in the NPRM due to the small manufacturer criteria and provisions, the manufacturer production line testing program, the in-use credit program, the significantly reduced administrative programs for SD/I engines, and other proposals set forth in this SNPRM.

The new estimates are also based on additional information indicating that the rule affects more manufacturers, and potentially a larger number of small manufacturers. This new information prompted EPA to reduce administrative program burdens as much as possible. EPA now estimates that the public burden for the collection of information for all ICRs under the proposed rule as a whole would average approximately 4,200 hours annually for a typical engine manufacturer.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be sent to Chief, Information Policy Branch, EPA, 401 M St., SW. (mail code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this SNPRM and the NPRM.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The RFA explores options for minimizing those impacts.

As mentioned in the NPRM, EPA considered, but rejected, the notion of exempting small manufacturers from enforcement programs or from the regulation entirely. A more proportionate sharing of cost burden was deemed appropriate. The pollution emitted by each of these engines not only contributes to ambient air quality problems but also has health impacts on the user of the engine who is in close proximity to the exhaust emissions.

However, as stated in the NPRM, EPA has recently adopted a new approach to regulatory flexibility: [22] for purposes of EPA's implementation of the Act, any impact is a significant impact, and any number of small entities is a substantial number. Thus, EPA will consider regulatory options for every regulation subject to the Act that can reasonably be expected to have an impact on small entities. In light of this new approach, EPA has determined that, if no provisions were established to take economic effects into account, this rule would be likely to have a significant effect on a substantial number of small entities. As a result, in addition to the flexibility inherent in averaging, trading, and banking of emissions, EPA has tailored this rule to minimize the cost burdens imposed on smaller engine manufacturers.

The Agency performed an RFA in conjunction with the NPRM.[23] Subsequent comments on the NPRM indicated that EPA's proposal would indeed adversely impact small manufacturers while providing little environmental benefit. Specifically, many small manufacturers of SD/I gasoline engines and marinized CI engines came forward to inform EPA of the severe impacts the proposed regulations would have on their businesses.

In this SNPRM, EPA proposes small manufacturer exemptions and flexibility provisions, so as to ensure that this rulemaking does not unduly burden small manufacturers. The Agency is supplementing the RFA to reflect these proposals. EPA requests comment as to whether the proposed small manufacturer exemptions and provisions adequately address the needs of affected manufacturers.

C. Executive Order 12866

Under Executive Order 12866,[24] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that the NPRM, which this notice supplements, is a ''significant regulatory action'' because it may adversely affect in a material way that sector of the economy involved with the production of marine engines. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

[22] Habicht, F. Henry II, Deputy Administrator, Internal EPA Memorandum, ''Revised Guidelines for Implementing the Regulatory Flexibility Act,'' April 9, 1992.

[23] 59 FR 55930 (November 9, 1994).

[24] 58 FR 51735 (October 4, 1993).

D. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's supplemental proposal regarding marine engines and proposed revisions to Parts 89 and 90 of the CFR do not trigger the requirements of UMRA. EPA expects to prepare a budgetary impact statement in compliance with Section 202 of the UMRA, and to follow the requirements of Section 205 of the UMRA, at the time it issues a final rule on marine engines.

List of Subjects

40 CFR Part 89

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

40 CFR Part 90

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

40 CFR Part 91

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: January 26, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–2230 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300410; FRL–4994–4]

Xanthan Gum-Modified, Produced by the Reaction of Xanthan Gum and Glyoxal; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that xanthan gum-modified, produced by the reaction of xanthan gum and glyoxal (maximum 0.3% by weight) be exempted from the requirement of a tolerance when used as a surfactant in pesticide formulations. This proposed regulation was requested by Rhone-Poulenc, Inc., pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by the docket control number [OPP–300410], must be received on or before March 8, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [OPP–300410]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, North Tower, Arlington, VA, (703)–308–8375, e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., CN 7500, Cranbury, NJ 08512-7500, has submitted pesticide petition (PP) 2E04084 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for xanthan gum, modified, produced by the reaction of xanthan gum and glyoxal (maximum 0.3% by weight) when used as a surfactant in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where

it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for xanthan gum, modified, produced by the reaction of xanthan gum and glyoxal will need to be submitted. The rationale for this decision is described below:

1. Xanthan gum-modified, is a glyoxal-treated xanthan gum that, while similar to xanthan gum, has improved dispersion properties.

2. Xantham gum is a naturally occurring high molecular weight biopolysaccharide which is already exempted from the requirement of a tolerance when used as a thickener in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest (40 CFR 180.1001(c)) and when used in pesticide formulations applied to animals (40 CFR 180.1001(e)).

3. Glyoxal is cleared for use as a component of coated or uncoated food contact surface paper and paperboard (21 CFR 176.180 (b)(2)).

4. Hydrolysis of xantham gum-modified results in the formation of xanthan gum and sodium glycolate, which is toxicologically similar to oxalic acid.

5. Based on an estimation of dietary exposure utilizing a worst-case situation in which a pesticide formulation utilizes modified xanthan gum containing 0.3% glyoxal, the resultant dietary exposure to glyoxal would be considered to be of no toxicological concern.

6. A pesticide formulation containing modified xanthan gum with a 0.1 to 0.3% glyoxal concentration would typically contain from 2.9 to 7.5 ppm (parts per million) glyoxal. At these levels, it is considered to be of low ecological effects or environmental fate concern.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this proposal be referred to an Advisory Committee in accordance with section 408(e) of FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket control number, [OPP–300410]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m. Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP–300410] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraph (c) in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(c) * * *

Ingredients	Limits	Uses
* *	* * *	* *
Xanthan gum-modified, produced by the reaction of xanthan gum and glyoxal (maximum 0.3% by weight).	Not more than 0.5% of pesticide formulation.	Surfactant
* *	* * *	* *

[FR Doc. 96–2233 Filed 2–6–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E3060/P641; FRL–4996–6]

RIN 2070–AC18

Pesticide Tolerance for 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule

SUMMARY: EPA proposes to extend the tolerances for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodity soybeans. The Agency has not completed the regulatory assessment of its science findings; therefore, the Agency is proposing to extend this tolerance for 3 years.

DATES: Comments, identified by the docket number, [PP 4E3060/P641], must be received on or before February 16, 1996. The proposed tolerance would expire on December 31, 1998.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E3060/P641]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM 23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6224.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the Federal Register of August 19, 1992 (57 FR 37475), which established a tolerance for residues of 2,4-D (2,4-dichlorophenoxyacetic acid) in or on soybeans with an expiration date of December 1995. This tolerance, with an expiration date, was required by EPA to allow the Industry Task Force II on 2,4-D Research Data to submit additional field residue trials, including bridging studies with ester and amine formulations, plant metabolism studies, storage stability data, and oncogenicity studies in two species, rat and mouse preferred. All the studies except the oncogenicity studies in the rat and mouse and the storage stability data have been reviewed. Oncogenicity studies using male and female mice and female rats are currently in review, and an oncogenicity study in the male rat is due into the Agency in January 1996. The storage stability data is currently in progress. Because the Agency has not completed the regulatory assessment of its scientific findings, EPA is proposing to amend 40 CFR 180.142(k) to extend the expiration date for these tolerances until December 31, 1998. Based on the information cited above and in the document proposing the establishment of the time-limited tolerance for 2,5-D (57 FR 24565, June 10, 1992), the Agency has determined that when used in accordance with good agricultural practices, this ingredient is useful and the tolerance will protect the public health. Therefore, EPA is proposing to extend the tolerance as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3060/P641]. All written comments filed in response to this proposed rule will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 4E3060/P641] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or establishing exemptions from tolerance requirements do not have a significant impact on a substantial number of small entities. A certification statement to this

effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 29, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.142 (k), to read as follows,

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(k) A tolerance that expires on December 31, 1998, is established for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) resulting from the preplant use of 2,4-D ester or amine in or on the raw agricultural commodity as follows:

Commodity	Parts per million
Soybeans	0.1

[FR Doc. 96–2625 Filed 2–6–96; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–004; Notice 1]

Mirror Safety Public Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This document announces a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will seek information from interested parties on the safety of mirror systems and suggestions for actions to enhance safety with respect to NHTSA's regulatory and non-regulatory mirror-related actions. This docuemnt also invites written comments on the same subject.

DATES: *Public meeting.* The meeting will be held on March 13, 1996 at 1:30 pm. Those wishing to make an oral presentation at the meeting should contact Gary R. Woodford, at the address, telephone number, or fax number listed below, by February 29, 1996.

Written comments. Written comments are due by March 22, 1996.

ADDRESSES: *Public meeting.* The public meeting will be held at the following location: Royce Hotel, 31500 Wick Road, Romulus, MI 48174, near the Detroit Metro Airport.

Written comments. All written comments should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street, SW, Washington, DC 20590. Please refer to the docket number at the top of this notice when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Gary R. Woodford, Office of Safety Performance Standards, NHTSA, 400 7th Street, SW, Washington, DC 20590. Telephone 202–366–4931; Fax 202–366–4329.

SUPPLEMENTARY INFORMATION:

Regulatory Reform

Calling for a new approach to the way Government interacts with the private sector, President Clinton asked the Executive Branch agencies to both improve the regulatory process and seek non-regulatory means of working with our customers and partners. Specifically, the President requested that agencies: (1) Cut obsolete regulations; (2) reward results; (3) create grassroots partnerships by meeting with affected and interested parties; and (4) use consensual rulemaking more frequently. This public meeting responds to the third item by reaching out to the agency's grassroots partners with regard to the safety performance of mirrors for cars, light trucks and vans, sport utility vehicles, and heavy trucks. A separate meeting will be held to address motorcycles, including mirror issues unique to motorcycles.

Federal Motor Vehicle Safety Standard No. 111 sets minimum requirements for the performance and location of original equipment mirrors to assure that they provide drivers with a clear and reasonably unobstructed rearward field-of-view. To help NHTSA assess the need for possible enhancements to the standard and to keep abreast of new mirror developments, NHTSA has conducted much research to identify how mirror system design influences driver performance during lane changing and merging. Specifically, the research goal has been to develop a safety relevant procedure to assess the effect of mirror image quality (e.g., distortion and minification) and field-of-view on the ability of drivers to process mirror information quickly and accurately.

Before proceeding with future research, regulatory, or other activities for improving safety through enhanced rearward vision, NHTSA is holding this outreach meeting to obtain information from its customers and partners, including drivers, inventors, mirror manufacturers, motor vehicle manufacturers, vehicle and traffic safety organizations, consumer groups, and others concerned about vehicle mirror use and design. The information is needed to help NHTSA better understand mirror safety problems that can be addressed through regulatory and non-regulatory actions by the agency working with other interested parties. The types of issues of particular interest to NHTSA include the following:

Non-Regulatory

1. What are the types of safety problems drivers are experiencing with current mirror systems?

2. Are drivers making proper use of current mirror systems? If not, what information could NHTSA provide to drivers and how can the agency and other groups best help to disseminate the information?

3. Are there unique needs or different patterns of use of mirrors of special driving populations, such as older persons, novice drivers, drivers with disabilities, drunk or drugged drivers, fatigued drivers, and drivers with vision problems, which original equipment or aftermarket mirrors could address? Should we inform drivers about these options to encourage their use, and if so, how? What training would be advised or required to effect a safe transition from conventional mirror systems?

4. What aftermarket mirrors exist that could reduce ''blind spots,'' such as aspheric mirrors? Should the agency play a role in informing the public about the benefits or problems with these mirrors?

5. Are there steps the agency could take to increase consumer receptivity to using certain aftermarket mirrors?

6. Should consumers be made aware that there are market choices available in mirrors provided as original equipment?

7. Do drivers have a difficult time getting used to new mirror systems or operating multiple vehicles with

different mirror system designs? Should NHTSA take action to support better understanding and use of new mirror systems? If so, how?

8. Should NHTSA work closely with States, dealerships, private organizations such as the American Association of Retired Persons and the American Automobile Association, and other groups to get information on mirror safety problems, and encourage and disseminate information on better mirror technology? Which organizations?

9. Should a computer model that provides a standardized measure of indirect field-of-view be made available to help consumers and fleet purchasers compare field-of-view of different vehicles? What other mirror system performance characteristics should be made available to help vehicle purchasers compare rearview visibility from vehicles?

10. What other non-regulatory topics should NHTSA consider regarding mirrors and driver behavior relative to mirrors?

Regulatory

1. Are there near-term regulatory actions that NHTSA could take concerning vehicle mirror systems to help driver performance when changing lanes, merging, and backing?

2. Are there any agency regulations which inhibit new mirror technology that could enhance driver safety? What factors should the agency consider in not inhibiting new mirror technology?

3. Are there steps the agency should take to enhance international harmonization? What steps, and for what result?

4. What mirror performance specifications should be considered to better accommodate special populations, such as novice drivers, older drivers, drivers with disabilities, drunk or drugged drivers, fatigued drivers, or drivers with vision problems?

5. What safety problems could be addressed with NHTSA's future research?

6. Should NHTSA undertake rulemaking to expand market choices for original equipment mirrors, such as automatic dimming mirrors?

7. What other regulatory topics should NHTSA consider regarding mirrors and driver behavior relative to mirrors?

NHTSA seeks the public's views on these and related issues concerning mirror technology, driver education and information, and how the driver interacts with the mirror system. Suggestions should be accompanied by a rationale for the action and the expected benefits and other consequences. Recommendations should include, where available, information on safety effects, consumer costs, regulated party costs, overall cost-effectiveness, small business effects, availability of voluntary industry standards, effects on international harmonization, and whether the action reflects a ''common sense'' approach to solving the problem.

The public meeting will be held at 1:30 pm on March 13, 1996. The agency's quarterly technical meeting, which focuses on NHTSA's safety performance standards, safety assurance, and other programs, is also scheduled on March 13, starting at 9:30 am, and is more fully described in a separate Federal Register notice.

Procedural Matters

Persons wishing to speak at the public meeting should contact Gary Woodford by the indicated date, including requests for audio-visual aids. Those speaking at the public meeting should limit their presentation to 15 minutes. However, because this meeting will be limited to one afternoon, if all speakers cannot be accommodated with a 15 minute speaking time, it may be revised to 10 minutes at the meeting. If the presentation will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting for submission to NHTSA, so that NHTSA can readily include the material in the public record.

NHTSA staff at the meeting may ask questions of any speaker, and any participant may submit written questions for the NHTSA staff, which NHTSA may, at its discretion, address to other meeting participants. There will be no opportunity for participants directly to question each other. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so.

A schedule of participants making oral presentations will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

NHTSA will continue to file relevant information in the docket as it becomes available after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Issued: January 30, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–2429 Filed 2–6–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 26
Wednesday, February 7, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m. on March 7, 1996, at the Wilson Inn—Airport, 4301 East Roosevelt, Little Rock, Arkansas 72206. The purpose of the meeting is to plan future projects and hold orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTY 913–551–1413). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 1, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–2571 Filed 2–6–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on March 28, 1996, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana 70130. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTY 913–551–1413). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 1, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–2570 Filed 2–6–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 11:30 a.m. and adjourn at 1:30 p.m. on February 22, 1996, at the Kings Inn, 220 South Pierre, Pierre, South Dakota 57501. The purpose of the meeting is to discuss current civil rights issues in the State, brief committee members on Commission activities, and plan future activities. The Committee will reconvene at 2:00 p.m. and adjourn at 3:00 p.m. at the State Capitol, 500 E. Capitol, Room 413, Pierre, South Dakota, to hold a press conference to release the report: *Equality Issues in South Dakota Women's Employment.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jonathan Van Patten, 605–677–5361, or John F. Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 1, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–2569 Filed 2–6–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on February 22, 1996, at the Milwaukee Hilton, 509 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203. The purpose of the meeting is to hold a consultation entitled ''Focus on Affirmative Action.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Geraldine McFadden or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 1, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–2572 Filed 2–6–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013096B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of two applications for scientific research permits (P497D and P510B).

SUMMARY: Notice is hereby given that the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU) and the Shoshone-Bannock Tribes at Fort Hall, ID (SBT) have applied in due form for permits to take threatened or endangered species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before March 8, 1996.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: ICFWRU and SBT request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

ICFWRU (P497D) requests a 5-year permit to take adult, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to assess the passage success of migrating adult salmonids at the four dams and reservoirs in the lower Columbia River, evaluate specific flow and spill conditions, and evaluate measures to improve passage. Adult salmonids are proposed to be captured, anesthetized, fitted with radio transmitters and identifier tags, allowed to recover from the anesthetic, and released. Once returned to the river, the movement and migration timing of each fish will be recorded at fixed-site and mobile receiver stations as the fish migrate upstream. Primary benefits of the study will be the ability to identify areas in the fishways that are problematic for adult passage and to determine the proportion of salmonids that ultimately pass the upstream dams and enter tributaries to spawn, enter hatcheries, are taken in fisheries, or are losses between the dams.

SBT (P510B) requests a 5-year permit to take juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a study designed to evaluate the destiny of the ESA-listed juvenile sockeye salmon from the Idaho Department of Fish and Game's captive broodstock program that were released into Pettit Lake, ID in July, 1995 under the authority of permit 795 (60 FR 37052, July 19, 1995). An evaluation of the success of this release is necessary to make management decisions on future releases of the progeny from the captive broodstock program. To estimate overwinter survival, monitor downstream migration, and calculate smolt-to-adult return rates, juvenile sockeye outmigrating from the lake each year are proposed to be captured, anesthetized, tagged with passive integrated transponders and/or weighed and measured, allowed to recover from the anesthetic, and released.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: January 31, 1996.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–2580 Filed 2–6–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

February 1, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: February 8, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 15, 1995, the Governments of the United States and Romania agreed to amend and extend their Bilateral Textile and Apparel Agreement of December 20, 1994 for three consecutive one-year periods, beginning on January 1, 1996 and extending through December 31, 1998.

These limits may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). On the date that the United States applies the Uruguay Round Agreements to Romania, the restraint limits will be modified in accordance with the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated December 15, 1995 between the Governments of the United States and Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 8, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other

vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit [1]
Cotton Group	
200, 201, 218–220, 222–227, 229, 237, 239, 300, 301, 313–315, 317, 326, 330–342, 345, 347–354, 359–363, 369, 800, 810, 831–836, 838–840, 842–847, 850–852, 858, 859, 863, 870, 871 and 899, as a group.	57,304,381 square meters equivalent.
Sublevels in Cotton Group	
237	61,000 dozen.
313	1,672,255 square meters.
314	1,254,191 square meters.
315	3,018,212 square meters.
333/833	119,538 dozen.
334	288,937 dozen.
335/835	151,416 dozen.
338/339	653,477 dozen.
340	285,238 dozen.
341/840	119,538 dozen.
347/348	510,032 dozen.
350	27,000 dozen.
352	181,818 dozen.
359	652,174 kilograms.
360	1,685,400 numbers.
361	1,123,600 numbers.
369	295,821 kilograms.
810	4,180,637 square meters.
836	56,180 dozen.
847	75,000 dozen.
Group III	
431–436, 438–440, 442–448, 459, 630–654 and 659, as a group.	64,593,247 square meters equivalent.
Sublevels in Group III	
433/434	9,262 dozen.
435	9,688 dozen.
442	11,221 dozen.
443	86,557 numbers.
444	40,804 numbers.
447/448	22,503 dozen.
459	34,019 kilograms.
633	44,199 dozen.
634	53,687 dozen.
638/639	583,311 dozen.
640	80,225 dozen.
641	34,775 dozen.
647	80,737 dozen.
648	57,746 dozen.
659	101,768 kilograms.
Levels not in a group	
410	167,225 square meters.
465	129,600 square meters.
604	1,596,321 kilograms.
618	1,672,255 square meters.
666	116,306 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

Imports charged to these category limits, except Categories 410, 465, 618 and 666, for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (square meters equivalent/category unit)
341/840	12.1
433/434	35.2
638/639	12.96

These limits may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–2592 Filed 2–6–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Board of Trade for Designation as a Contract Market in Futures and Options on the CBOT Argentina Brady Bond Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in futures and futures options on the CBOT Argentina Brady Bond Index. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before March 8, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Reference should be made to the CBOT Argentina Brady Bond.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581, (202) 418–5277.

SUPPLEMENTARY INFORMATION: The Exchange's proposed Brady bond contracts are based on an index representing the sovereign debt of Argentina. The SEC has been petitioned to grant the sovereign debt of Argentina exempt status under SEC Rule 240.3a12–8. The SEC published the proposed amendment to Rule 240.3a12–8 in the Federal Register for a 30-day public comment period on December 20, 1995. Should the SEC add the sovereign debt of Argentina to the list of exempted securities, the Commission would then be able to designate futures on such security. See Section 2(a)(1)(B)(v) of the Act.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17

CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 31, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–2522 Filed 2–6–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Notice of Closed Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Nominations Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 19, 1996.

TIME: 9 a.m. to 4:30 p.m.

LOCATION: Ritz-Carlton Hotel, St. Louis Missouri.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC, 20002–4233; Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Nominations Committee of the National Assessment Governing Board will meet in closed session on February 19, 1996, from 9 a.m. to 4:30 p.m., to review the resumes of nominees to fill upcoming Board membership vacancies in the following categories: Chief State School Officer, Twelfth Grade Classroom Teacher, Test and Measurement Expert, Local School Superintendent, and General Public.

The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Due to the government furlough, adjustments were made in the schedule established for the review of nominee applications. Meeting dates were changed to accommodate the process and the availability of committee members. Therefore, the public is given less than fifteen days notice of this meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. until 5 p.m.

Dated: February 1, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 96–2585 Filed 2–2–96; 8:45 am]

BILLING CODE 4000–01–M

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 11, 1994, an arbitration panel rendered a decision in the matter of *Washington State Department of Services for the Blind* v. *United States Department of Interior, Bureau of Reclamation (Docket No. R–S/91–7).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(b). The Randolph-Sheppard Act (the Act) provides a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Act, the State licensing agency (SLA) may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, SW., Room 3230, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

In 1982, the Department of Interior through its Bureau of Reclamation (DOI) entered into an agreement with the Washington State Department of Services for the Blind, the SLA. This agreement provided for the operation by the SLA of a souvenir stand inside the visitors' arrival center at the Grand Coulee Dam in the State of Washington. In addition to the facility inside the visitors' arrival center, the agreement allowed the SLA to designate a blind vendor to operate several vending machines near the entrance to the Dam's powerhouse and to sell food and drink at a site in the visitors' parking lot.

In 1991 the DOI informed the SLA that it would retake possession of the space occupied by the blind vendor inside the visitors' arrival center. The SLA protested. However, DOI proceeded with the cancellation of the permit that authorized the operation of the vending facility. The cancellation of the permit was effective on May 9, 1991. DOI then assumed possession of the space at the visitors' arrival center where the blind vendor had previously sold souvenirs and informational publications. DOI's stated reason for cancellation of the permit was that it had entered into an agreement in April 1990 with the National Park Service and the Colville and Spokane Indian tribes to conduct interpretive programs at that site.

Subsequently, in an effort to keep the blind vendor in business at the Grand Coulee Dam, the SLA relocated the vendor to a trailer in the visitors' parking lot. The SLA rented and then later purchased a trailer to carry out the activities of the vendor formerly housed at the visitors' arrival center. The results were less than satisfactory from the perspective of the vendor and the SLA. However, DOI further required that, at the end of each tourist season, the SLA remove from the Dam site the vendor's trailer and inventory.

This requirement posed a considerable expense to the SLA. Consequently, the SLA attempted to renegotiate its permit with DOI, requesting reinstatement of its right to operate the facility in its former space at the visitors' arrival center. Alternatively, the SLA requested that DOI pay for the costs of the lease termination and the cost of relocating the vending facility. These expenses included the trailer rental, purchase of a trailer, and related expenses arising from the removal and storage of the trailer during the off season when the visitors' facilities were closed (Labor Day to the following Memorial Day).

Negotiations did not produce a resolution of the dispute, and on April 12, 1991 the Attorney General for the State of Washington on behalf of the SLA requested the Secretary of the U.S. Department of Education to convene an arbitration panel to hear this complaint. The panel was convened on March 16, 1994.

Arbitration Panel Decision

The arbitration panel at the outset of the hearing heard DOI motions challenging the authority of the arbitration panel to hear this dispute, to consider the assessment of monetary damages, or otherwise to carry out the congressional mandate under the Act and its implementing regulations, contending that DOI regulations in 43 CFR Part 13 were controlling.

The panel denied DOI's motions concerning the arbitration panel's jurisdiction to hear the complaint and assess damages on the grounds that the 1974 Randolph-Sheppard Act, as amended by Congress, specifically delegated to the Secretary of the U.S. Department of Education the exclusive authority to establish uniform rules and regulations to implement the Act. The panel further ruled that this mandate renders the regulations of any other Department or Federal instrumentality that are in conflict or at odds with those of the Department of Education invalid and unenforceable.

During the arbitration hearing, DOI also advanced the argument that the Act does not apply to this dispute because the visitors' arrival center is less than 15,000 square feet and has fewer than 100 Federal employees working in the building. However, the panel ruled that it is clear from the 1974 amendments to the Act that Congress expanded the definition of areas to which the Act applied to all Federal facilities. The square footage and number of Federal employees referred to in the regulations are relevant only if, unlike this case, the parties failed to agree on the feasibility of operating a blind vendor's facility on the property.

While it is true that the visitors' arrival center is less than 8000 square feet and has fewer than 20 Federal employees who work in the center, what makes this vending operation a success is the more than 1,500,000 visitors a year who come to the Grand Coulee recreational area. Moreover, the panel reasoned that the events surrounding the establishment of this vending facility made it very clear that all parties understood that this vending location was a Randolph-Sheppard facility and that, when DOI negotiated the permit, it did not raise objections to the SLA that the visitors' arrival center at the Grand Coulee Dam was not an appropriate location because it lacked the 15,000 square feet or employed fewer than 100 Federal employees. DOI waived its right to object under the terms of the regulations when it agreed with the SLA to establish the vending location pursuant to 34 CFR 395.31 (d) and (e).

The panel further ruled that the 1982 Memorandum of Agreement signed by DOI and the SLA in its introductory paragraph clearly recognizes that the Grand Coulee Dam location is a Randolph-Sheppard facility and, therefore, is governed by the Act and its implementing regulations. However, contrary to DOI's claim, the hearing records indicate that DOI has refused to grant the SLA a permit with an indefinite time period pursuant to the Act (20 U.S.C. 107(b)) and the regulations (34 CFR 395.7(b)), notwithstanding the fact that the SLA has repeatedly requested a permit to be signed in accordance with the Act and the regulations.

Consequently, the panel ruled that to uphold the terms of the 1982 Memorandum of Agreement regarding its duration and the right of DOI to unilaterally terminate the blind vendor's operation at the visitors' arrival center and impose upon the SLA the costs and losses of relocation would be in direct violation of the congressional mandate, the Randolph-Sheppard Act, and the implementing regulations. The fact that DOI signed an agreement with the National Park Service and the Colville and Spokane Indian tribes in 1990 to provide information about the area and the culture does not supplant its obligations to the SLA and the blind vendor under the Act.

The panel award directed DOI to enter into a permit agreement with the SLA in accordance with the Act and the regulations and to reinstate the blind vendor in the space formerly occupied or negotiate an alternative comparable space at the visitors' arrival center. DOI was ordered to pay all costs and expenses incurred by the SLA as the result of the vendor's removal from the visitors' arrival center. These expenses included, but were not limited to, the costs of the trailer rental, the storage and movement of the trailer and inventory, and any other expenses incurred as the result of the removal of the blind vendor. The panel decision stated that, in the event the SLA agrees to an alternative location for the vendor, the location shall in all particulars be equal in opportunities and amenities to the visitors' arrival center and shall be provided entirely at the expense of DOI unless otherwise agreed upon by the SLA. Further, the panel decision directed the DOI to require that the National Park Service and the Colville and Spokane Indian tribes cease and desist selling any goods in competition with the blind vendor, after consultation with the SLA.

One panel member dissented.

The panel retained jurisdiction over this award with respect to the remedial portions.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: February 1, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–2534 Filed 2–6–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 96–08: Human Genome Program; Technological Advances

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, hereby announces its interest in receiving grant applications in support of the DOE Human Genome Program (HGP). This program is a coordinated, multidisciplinary, goal-oriented research effort to obtain a detailed understanding of the human genome at the molecular level. The objective of this notice is to promote substantive improvements in high-throughput, integrated approaches to large-scale human genome sequencing and its analysis. The solicited topics are: (1) Supportive instrumentation and automation systems; (2) assembly of multi-megabase scale, ordered and sequence-ready DNA clones; (3) informatics for the rapid assembly, analysis, and annotation of data from high-throughput sequencing; and (4) informatics for facile submission, retrieval, and visualization of data for single or multiple related databases, specifically including the Genome Data Base and the Genome Sequence Data Base. Applicants must address clearly how the proposed work will help achieve the sequencing goals of the HGP. Collaborative, multidisciplinary efforts are specifically encouraged.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 96–08, should be received by DOE by 4:30 p.m. E.S.T., March 28, 1996. A response discussing the potential program relevance of a formal application generally will be communicated to the applicant within 30 days of receipt. The deadline for receipt of formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., July 11, 1996, in order to be accepted for merit review in September 1996 and to permit timely consideration for awards in fiscal year 1997.

ADDRESSES: All preapplications, referencing Program Notice 96–08, should be sent to Ms. Joanne Corcoran, U.S. Department of Energy, Office of Health and Environmental Research, ER–72, 19901 Germantown Road, Germantown, MD 20874–1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 96–08. The above address for formal applications also must be used when submitting formal applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when handcarried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Goldstein, if referencing topic (1); Dr. Marvin Stodolsky, if referencing topic (2); and Dr. Jay Snoddy, if referencing topics (3) or (4) at the U.S. Department of Energy, Office of Health and Environmental Research, ER–72, 19901 Germantown Road, Germantown, MD 20874–1290, by telephone (301) 903–6488, by facsimile (301) 903–8521, or preferably by E-mail, joanne.corcoran@oer.doe.gov. General HGP information can also be obtained on the World Wide Web (WWW) Internet browsers at: http://www.er.doe.gov/production/oher/hug____top.html, http://www.ornl.gov/techresources/human____genome/home.html, and sites linked to these WWW pages. The 5-year goals of the U.S. HGP are published in the journal, Science, volume 262, pages 43–46.

SUPPLEMENTARY INFORMATION: The brief preapplication, in accordance with 10 CFR 600.10(d)(2), should consist of two to three pages of narrative describing the research objectives and methods of accomplishment. The preapplications will be reviewed for relevance to the notice, and further instructions will be provided with the response. Preapplications determined by staff of the Office of Health and Environmental Research to be insufficiently directed at the goals of this notice will be returned without further review to the applicant. Telephone and FAX numbers are required parts of the preapplication, and electronic mail addresses are desirable.

It is anticipated that approximately $2,000,000 will be available for grant awards in this area during FY 1997, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds, progress of the research, and continuing program need. Projected awards will be in the range of $50,000 per year up to $1,000,000 per year with terms of 2 to 3 years.

Information on the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72, 19901 Germantown Road, Germantown, MD 20874–1290. Telephone requests may be made by calling (301) 903–6488. Internet requests can be made to: joanne.corcoran@oer.doe.gov. Electronic access to ER's Financial Assistance Guide is possible via the Internet using the following E-mail address: http://www.er.doe.gov

The Office of Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (59 FR 34496, July 5, 1994) or such later revision of those guidelines as may be published in the Federal Register.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on January 24, 1996.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 96–2635 Filed 2–6–96; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 96–09: Human Genome Program; Ethical, Legal, and Social Implications

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy, hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). This program is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice encompasses research grants that address ethical, legal, and social issues that may arise from the use of information and knowledge resulting from the HGP.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications

referencing Program Notice 96–09, should be received by DOE by 4:30 P.M. E.S.T., March 28, 1996. A response discussing the potential program relevance of a formal application generally will be communicated to the applicant within 30 days of receipt. The deadline for receipt of formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., July 11, 1996, to be accepted for merit review in September 1996 and to permit timely consideration for award in fiscal year 1997.

ADDRESSES: Preapplications referencing Program Notice 96–09 should be sent to Dr. Daniel W. Drell, U.S. Department of Energy, Office of Health and Environmental Research, ER–72, 19901 Germantown Road, Germantown, MD 20874–1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD, 20874–1290, ATTN: Program Notice 96–09. The above address for formal applications also must be used when submitting formal applications by U.S. Postal Service Express mail, and commercial mail delivery service, or when handcarried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, U.S. Department of Energy, Office of health and Environmental Research, ER–72, 19901 Germantown Road, Germantown, MD 20874–1290, by telephone (301) 903–6488, by FAX (301) 903–8521, or preferably by E-mail, joanne.corcoran@oer.doe.gov.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications to conduct research on privacy and confidentiality issues from the creation, use, maintenance, and disclosure of genetic information. This may include (but is not limited to) issues of ownership, commercialization, and control of genetic information, and the protection of the privacy of genetic information in various settings, including the workplace. Applications should demonstrate knowledge of the relevant literature and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience. All applications involving collaborations should include letters of support from the potential collaborators; these letters should specify the contributions the collaborator intends to make if the application is accepted and funded.

The DOE also solicits applications for the preparation and dissemination of educational materials in any appropriate medium that will enhance understanding of scientific, as well as the ethical, legal, and social aspects of the HGP among public or specified groups. If an educational effort for a specific group is proposed, the value to the HGP of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of conferences focusing on the ethical, legal, and social implications of the HGP. Issues to be examined may include (but are not limited to) implications of advances in the genetic characterization of complex traits (e.g., disease predisposition or susceptibility genes) and the impacts of advances in knowledge about polygenic conditions for various communities potentially faced with these impacts (e.g., courts, schools, etc.).

Educational and conference applications should demonstrate awareness of the relevant literature and include detailed plans for the accomplishment of project goals. In applications that propose the production of series for broadcast, audio-visuals, or other educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requests inclusion of a plan for assessment of the effectiveness of the proposed activities. For conference applications, a detailed and largely complete roster of speakers is necessary. At the completion of the conference, a summary or report is required. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience.

Ordinarily, DOE does not encourage applications dealing with issues consequent to genetic testing protocols. Additionally, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. For applications that propose the development of college-level curricula, DOE requests both detailed justification of the need for external support beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the HGP as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and, thus, strongly encourages the inclusion of plans for transition to self-sustaining status.

The brief preapplication, in accordance with 10 CFR 600.10(d)(2), should consist of two to three pages of narrative describing the research project objectives and methods of accomplishment. The reapplications will be reviewed for relevance to the notice, and further instructions will be provided with the response. Preapplications determined by staff of the Office of Health and Environmental Research to be insufficiently directed at the goals of the notice will be returned without further review to the applicant. Telephone and facsimile numbers are required parts of the preapplication, and electronic mail addresses are desirable.

It is anticipated that approximately $1,300,000 will be available for grant awards in this area during FY 1997, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from 1 to 3 years; most awards average about $200,000 per year for 2 or 3 years. Similar award sizes are anticipated for new grants.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72, 19901 Germantown Road, Germantown, MD 20874–1290. Telephone requests may be made by calling (301) 903–6488. Internet requests can be made to: joanne.corcoran@oer.doe.gov. Electronic access to ER's Financial Assistance Guide is possible via the Internet using

the following E-mail address: http//www.er.doe.gov

The Office of Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the Federal Register.

The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE HGP. The OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OHER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide timelines projecting progress toward achieving proposed goals.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 24, 1996.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 96–2636 Filed 2–6–96; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RM95–6–000 and RM96–7–000]

Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines; Statement of Policy and Request for Comments

Issued January 31, 1996.

I. Introduction

In this docket, the Commission has been exploring the criteria it should use when evaluating rates established through methods other than the traditional cost-of-service ratemaking method. In response to a number of requests from natural gas pipeline companies to approve rates based on various pricing methods, which may or may not be cost-based, the Commission has decided to establish a framework for analyzing certain of such proposals. The Commission solicited comments on the criteria it should use in evaluating non-cost-of-service based proposals [1] and representatives from all segments of the industry responded. The Commission has reviewed those comments and is now providing the industry with guidance by stating the criteria it will consider when evaluating proposals for market-based rates. Moreover, the Commission will modify its existing policy statement on incentive ratemaking in light of the comments received.

Moreover, the Commission will modify its existing policy statement on incentive ratemaking in light of the comments received.

The Request for Comments also generated responses from the industry on other non-cost-of-service based alternatives to the Commission's traditional ratemaking methodology. In particular, the Commission has received and reviewed comments on negotiated/recourse rates. Under a negotiated/recourse program the Commission would dispense with cost-of-service regulation for an individual shipper when mutually agreed upon by the pipeline and its shipper and permit negotiated terms and/or conditions that could vary from the pipeline's otherwise applicable tariff. A recourse service found in the pipeline's tariff would be available for those shippers preferring traditional cost-of-service rates and services.

Based on the comments received, the Commission is prepared to permit negotiated rates within the guidelines discussed below. The Commission has determined, however, that in order to make an informed decision, additional consideration and comment is needed regarding the legal and policy implications of negotiated terms and conditions of service. Therefore, the Commission is establishing a separate proceeding to solicit further comments concerning negotiated terms and conditions.

II. Background

In 1989, Congress urged the Commission to ''improve [the] competitive structure [of the natural gas industry] in order to maximize the benefits of [wellhead] decontrol.'' [2] The Commission responded to Congress in part in Order No. 636 [3] by taking significant steps to increase competition in the transportation market. By regulating pipelines in a manner that seeks to ensure all shippers have meaningful access to the pipeline transportation grid, the Commission has created a regulatory environment intended to maximize competition.

The result of Order Nos. 436 and 636, combined with the North American Free Trade Agreement (NAFTA) and the certification of new pipelines, is an increased availability of unbundled transportation and greater integration of upstream and downstream natural gas markets, both domestic and Canadian. As a result, there has been a shift in traditional supply sources; many existing pipeline customers no longer want or need the same amount of firm capacity to their traditional pipeline's supply regions. In addition, the overall natural gas demand has been increasing steadily, albeit modestly. Since 1992, national consumption of natural gas has increased at about 3 percent.[4] This increased demand has occurred primarily in the industrial and electric end-use markets for natural gas.[5] Natural gas consumers in these markets often have dual fuel capability,[6] and for this reason pipelines have sought ratemaking flexibility to respond to alternative fuel competition in these markets.

Pipelines contend that greater flexibility is key to attracting new gas markets and retaining existing markets.

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[1] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 70 FERC ¶ 61,139 (Feb. 8, 1995) (''Request For Comments'').

[2] H.R. Rep. No. 29, 101st Cong., 1st Sess., at 6 (1989).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas After Partial Wellhead Decontrol, Order No. 636, 57 Fed. Reg. 13267 (April 16, 1992), FERC Stats. and Regs. ¶ 30,939 (April 8, 1992), *order on reh'g,* Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 (August 2, 1992), *order on reh'g,* Order No. 636–B, 61 FERC ¶ 61,272 (November 27, 1992), *reh'g denied,* Order No. 636–C, 62 FERC ¶ 61,007 (January 8, 1993), *appeal pending sub nom.* United Distribution Companies, *et al.* v. FERC, Nos. 92–1485, *et al.*

[4] In 1992, the overall national consumption of natural gas was 19.5 Tcf; in 1994 it reached 20.7 Tcf, a 6 percent increase. Figures for the first nine months of 1995 suggest an increase of 3 percent over the first 9 months of 1994. Natural Gas Monthly, December 1995.

[5] See, e.g., Energy Information Administration, Natural Gas Annual 1994, at p. 37 (DOE–EIA–0131(94)/1, November 1995) (''Most of the 476 billion cubic feet increase in consumption was due to increased reliance on natural gas in the electric utility sector., . . ., while industrial consumption grew by 196 billion cubic feet or 3 percent.'').

[6] See, e.g., National Petroleum Council, The Potential for Natural Gas in the United States, Volume III, Demand and Distribution, (December 1992) at 72–73 and 96.

For example, new electric generators have argued that they require long-term price certainty for transportation to finance gas-dependent ventures. In addition, it is asserted that ratemaking flexibility would permit pipelines to tailor natural gas transportation rates for electric generators to meet the swings in gas consumption often experienced by such generators. Pipelines have argued that, because many LDCs are unwilling to commit to long-term firm contracts, greater flexibility in rates and services is needed to retain customer load as old long-term contracts expire. LDCs also want flexibility so they can swing between pipelines to take advantage of the opportunity to purchase gas from different supply regions.

The Commission has recognized that additional rate design flexibility may be needed in a post-restructuring environment. In cases concerning the appropriate rate treatment for the costs associated with a pipeline's loss of revenues resulting from the expiration of contracts, for instance, parties have argued that they need additional rate design flexibility in order to market excess capacity and recover costs associated with their turned-back capacity.[7] In Natural Gas Pipeline Company of America,[8] the Commission indicated its willingness to permit pipelines flexibility in negotiating rates with its current and prospective customers for unsubscribed capacity, including rates which depart from SFV rate design. The Commission also stated that it would entertain, as part of a settlement, a proposal that allows rate flexibility for the capacity that customers had already elected.

In recent filings, pipeline companies also have urged the Commission to permit greater flexibility in service options and terms and conditions in order to meet competition. For example, Panhandle Eastern Pipe Line Corporation (Panhandle) proposed a Limited Firm Transportation (LFT) Service, under which its customers would be guaranteed the ability to schedule firm transportation service for only 20 days in any given month.[9] Trunkline Gas Company proposed a Premium Alternative Transportation (PAT) Service, consisting of interruptible transportation with preferential scheduling and curtailment features for an annual contracting fee.[10] Trunkline also proposed a Park and Transfer Service to help shippers manage their supply while reducing the frequency of cash-outs and scheduling penalties.[11]

In an attempt to respond to pipelines' requests for added flexibility, the Commission sought comments on alternative methods for pricing of services by natural gas pipeline companies. In its Request for Comments, the Commission stated its interest in developing a framework for analyzing proposals involving alternative pricing methods. Recognizing that there are a number of cost-based, as well as non-cost based alternatives to the Commission's traditional method, the Commission sought comment on fifteen specific questions related to possible ratemaking alternatives.

In the Request for Comments, the Commission also sought comment on a Commission Staff Paper that proposed criteria for evaluating of proposals for market-based rates. The staff paper applied basic market power analysis, as used in the past by the Commission as well as in other contexts, to develop a proposed analytical framework for evaluating gas pipeline market-based rate proposals.

The Commission also sought comment on whether changes should be made in its existing policy statement on incentive ratemaking.[12] The Commission noted that although it has stated the criteria upon which it will evaluate cost-based incentive rate proposals, to date no natural gas company has submitted such a proposal. The Commission raised several specific questions regarding its policy on incentive rate proposals and solicited comments on all aspects of its existing policy statement.

The Commission received 59 comments from parties representing all segments of the natural gas industry.[13] The majority of the responses focused on the staff paper and suggestions for criteria for evaluating market-based rate proposals. Furthermore, the responses critically analyzed the Commission's existing incentive rate policy statement and offered sound suggestions for altering the existing policy to meet the needs of the public interest in today's natural gas market.

The comments also proposed other alternatives to traditional cost-of-service ratemaking. Specifically, INGAA proposed that the Commission approve negotiated/recourse rate applications. Under such applications, pipelines would be allowed to negotiate a rate and/or terms and conditions of service so long as a Commission approved (recourse) rate remained available. Customers would always retain the right to elect the recourse rate and forego negotiation. Various commenters filed responses to INGAA's proposal.[14] Several of these commenters generally support INGAA's proposal although they object to INGAA's proposal to index the recourse rate.[15] Comments in opposition to INGAA's proposal focused on issues ranging from cost shifting and degradation of service to preventing undue discrimination and complying with the NGA's filing requirement. INGAA further clarified its proposal on September 25 and November 9, 1995 and commenters filed additional responses thereafter. A detailed discussion of INGAA's proposal and the responses thereto is included as part of the Commission's Request for Comments in Section IV below.

III. Policy on Market-Based Rates

The Commission has determined that where a natural gas company can establish that it lacks significant market power,[16] market-based rates are a viable option for achieving the flexibility and added efficiency required by the current marketplace. To date, the Commission has reviewed requests by regulated companies to charge market-based rates on a case-by-case basis. The Commission intends to continue in this vein, but is announcing the criteria it will generally use in the review process to aid companies in preparing their proposals. Below, we discuss the criteria the Commission will consider in evaluating any pending or future proposal for market-based rates. Companies may submit proposals meeting the established criteria for system segments and/or specific services offered on a system.

[7] *See* Southern Natural Gas Co., 73 FERC ¶ 61,322 (1995); Natural Gas Pipeline Co. of America, 73 FERC ¶ 61,050 (1995); Transwestern Pipeline Co., 72 FERC ¶ 61,085, *reh'g denied*, 72 FERC ¶ 61,089 (1995); and El Paso Natural Gas Co., 72 FERC ¶ 61,083 (1995).

[8] 72 FERC ¶ 61,083 (1995).

[9] Panhandle Eastern Pipe Line Co., 72 FERC ¶ 61,185 (1995).

[10] Trunkline Gas Co., 73 FERC ¶ 61,107 (1995).

[11] *Id.*

[12] Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 (1992).

[13] A list of the commenters is included as an appendix to this policy statement.

[14] To date, the Commission has received comments on INGAA's proposal from Brooklyn Union, GRI, IPAA, NGSA, and a group of eight industrial organizations.

[15] AGD, Brooklyn Union, and UGI.

[16] Transwestern Pipeline Company, 43 FERC ¶ 61,240 (1988); El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989); Transcontinental Gas Pipe Line Corporation, 55 FERC ¶ 61,446 (1991); Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992); Koch Gateway Pipeline Company, 66 FERC ¶ 61,385 (1994); Buckeye Pipe Line Company, 53 FERC ¶ 61,473 (1990), and Williams Pipe Line Company, 69 FERC ¶ 61,136 (1994).

A. The Comments Received

The majority of the responses to the Request for Comments focused on the staff paper and suggestions for criteria for evaluating proposals for market-based rates.

The majority of those commenters supported market-based rates where a market is fully competitive.[17] Many commenters recognized, however, that it is unlikely that the primary market, i.e., firm transportation by interstate pipeline companies, will meet the proposed criteria for market-based rates.[18]

LDCs, producers, marketers, and state commissions, joined by a few interstate pipeline companies, assert that other markets, for example those for capacity release and interruptible transportation, already are, or can become, competitive enough to permit market-based rates.[19] Several parties believe that the markets for short-term firm transportation,[20] storage,[21] and hub/market center services,[22] as well as new markets [23] may also be competitive enough to permit market-based rates. On the other hand, a number of endusers and LDCs take the position that market-based rates should not be allowed for certain markets, including firm transportation,[24] capacity release,[25] short-term firm,[26] interruptible transportation,[27] and storage.[28]

The staff paper issued with the Request for Comments proposed criteria for evaluating market-based rate proposals. The Commission sought comments regarding whether these criteria were appropriate, too strenuous, or not strenuous enough. The majority of pipeline commenters, along with a few others, indicated that the criteria were too strenuous and ignore competitive factors.[29] A few pipelines suggest the Commission should avoid ''one size fits all'' approaches and instead use evaluation criteria of a more general nature.[30] The majority of end-users and regulatory commissions believe the proposed criteria are either reasonable and strenuous enough or require only minor modifications. Specifically, AGD contends that competing products need not be identical. For example, AGD asserts that in the off-peak season, released FT and IT are virtually identical. Therefore, AGD suggests that the criteria be modified to allow for consideration of such differences in product definition.

AGD also argues that the criteria should be modified so that the difference in price to be considered will be the difference in the cost of obtaining delivered gas through the various alternatives. The Pa OCA contends that the timeliness criterion should be more strenuous. Pa OCA states that if projected alternative capacity is delayed or is less than projected, customers should have the option of continuing to pay a traditional cost-of-service rate until workable competition exists. The Ohio CC and Pa OCA state that ''ease of exit'' as well as ''ease of entry'' should be added to the criteria used to define product markets. Pa OCA also suggests that the financial risk to customers be added to the criteria used to define product markets.

The LDCs, producers, and marketers are evenly divided on the question. Those that oppose the criteria assert that they are too narrow, will lead to overregulation, and that the .18 the summary measure of market concentration known as the Herfindahl-Hirschman Index (HHI) screen is too low.[31] Several commenters suggested that other factors, including market competition, market definition, and product substitution, must be considered in evaluating any proposal for market-based rates.[32]

In response to the Commission's inquiry regarding the use of different standards for different types of service, a number of LDCs and pipelines argue that the Commission should use different standards for different services.[33] Several commenters assert that the standards should be tailored to the services offered and/or the market to be served.[34] In contrast, the few state regulatory commissions who responded on this issue suggest that the same criteria should be used for all services.[35]

B. Response to Legal Arguments Opposing Market-Based Rates

A few commenters raised specific arguments regarding the Commission's legal authority to implement market-based rates on a broad scale. Only the IPAA made a broad-based attack on the Commission's legal authority to permit market-based rates. The Commission believes that IPAA's attack is based largely on mistaken premises.

IPAA asserts that the NGA contemplates ''traditional'' or cost-of-service ratemaking and therefore adoption of market-based rates on a wide scale may be contrary to the statutory intent of the NGA. IPAA argues that the Supreme Court has specifically held that NGA Sections 5(b), 6(a), 9(a), 10(a) and 14(b) suggest that when Congress enacted the NGA, it contemplated ''traditional'' or cost-of-service ratemaking [36] IPAA narrowly construes the Supreme Court decisions in *FPC* v. *Hope*,[37] and the *Permian Basin Area Rate Case* [38] as applying solely in cases where the question to be decided is what methods should be used to establish a rate base, not whether some alternative to cost-of-service ratemaking would be appropriate.

This is an extremely narrow reading of the case law. Moreover, IPAA does not even acknowledge more recent cases

[17] AGA, Edison, Con Edison, ANR/CIG, CNG, Cove Point, INGAA, Koch Gateway, PGT, PEC Pipeline Group, IPAA, Indicated Shippers, Alberta, Florida, Ohio CC, New York, Mark B. Lively, and Transok.

[18] Brooklyn Union, Connecticut Natural, IPAMS, Illinois, Ohio PUC, Tejas, Atlanta Gas, Columbia Distribution, Northern Distributors, NI-Gas, UDC, Amoco, NGSA, Texaco, PA. OCA, and PaPUC.

[19] Edison, AGD, Atlanta Gas, Brooklyn Union, Pacific Northwest Commenters, CINergy Gas Companies, Columbia Distribution, Connecticut Natural, Con Edison, Northern Distributors, NI-Gas, Northern Indiana, PSE&G, UDC, Columbia, INGAA, PGT, WINGS, Illinois, Ohio CC, Pa. OCA, PaPUC, and the Ohio PUC.

[20] Connecticut Natural, Northern Distributors, UDC, Columbia, INGAA, and WINGS.

[21] Edison, APGA, Pacific Northwest Commenters, NI-Gas, INGAA, PGT, WINGS, IPAMS, PaPUC, and Tejas.

[22] Edison, APGA, Pacific Northwest Commenters, NI-Gas, INGAA, PGT, WINGS, IPAMS, PaPUC, and Tejas.

[23] NI-Gas, Northern Indiana, Columbia, Cove Point, and INGAA. New markets include new construction, new services, or new entrants.

[24] AF&PA, Fertilizer Institute, Energy Associates, NWIGU, Petrochemical Energy Group, Pacific Northwest Commenters, Northern Indiana, IOGA, and Ohio CC.

[25] AF&PA and NWIGU.

[26] APGA.

[27] AF&PA, Fertilizer Institute, APGA, and Pacific Northwest Commenters.

[28] Energy Associates.

[29] Cove Point, INGAA, Tejas, ANR/CIG, Brooklyn Union, KN Interstate, AGA, Koch Gateway, WINGS, Transok, KN Interstate, NGSA, PEC Pipeline Group, and Columbia.

[30] Enron, INGAA, and NorAm.

[31] Cove Point Pipeline, INGAA, Tejas, ANR Pipeline/CIG Pipeline, Brooklyn Union, KN Interstate Pipeline, AGA, Koch Gateway Pipeline, WINGS, Transok Pipeline, PEC Pipeline Group, and Columbia Pipeline.

[32] SoCalGas, CNG, Enron, INGAA, and NorAm.

[33] Wisconsin Distributors, AF&PA, Edison, AGA, AGD, Connecticut Natural, Northern Distributors, NI-Gas, Northern Indiana, UDC, Columbia, INGAA, KN Interstate, WINGS, IPAMS, Illinois, Ohio PUC, and Tejas.

[34] SoCalGas, Koch Gateway, and PEC Pipeline Group.

[35] Industrial Gas Consumers, APGA, CNG, NGSA, Alberta, Florida, and Ohio CC.

[36] Citing, *Colorado Interstate Gas Company* v. *FPC*, 324 U.S. 581 at 601–2 (1945) (*CIG*).

[37] In Hope, the Court held that the Commission was not bound to use any single formula or combination of formulae in determining rates, but that the Commission's rate-making function ''involves the making of pragmatic adjustments'' and that under the statutory standard ''it is the end result reached not the method employed which is controlling.'' 320 U.S. 591 at 602 (1944).

[38] 390 U.S. 747 (1968).

such as *Farmers Union Central Exchange* v. *FERC*,[39] which recognized the possibility of moving to light-handed regulation when justified by a showing that the goals and purposes of the statute can be accomplished without traditional regulatory oversight.[40] Thus, IPAA's arguments in this regard are not persuasive.

IPAA also maintains that an essential demand in the pipelines' request for market-based rates is that the Commission ignore the statutory prohibition against ''undue discrimination.'' IPAA claims that the pipelines wish to be able to discriminate in rates, terms, and conditions, which it argues would violate the NGA and possibly of the antitrust laws. Simply put, IPAA maintains pipelines want to charge some customers higher rates in order to subsidize lower rates for affiliates and other favored customers, in violation of the NGA.

The Commission does not share IPAA's view. First, the scenario IPAA fears is possible only if a pipeline exercises market power. A company cannot make one group of customers subsidize another unless it has market power over the group that would pay the higher rates. If a pipeline has market power over a service then the Commission cannot permit it to charge market-based rates for that service. In addition, the Commission has carefully scrutinized affiliate relationships and generally has taken special precautions, imposing special rules, where affiliates are involved. In those instances the Commission has recognized that the normal market controls will not work with affiliate transactions. Finally, the statute does not prohibit all differences in rates. The prohibition in the NGA is against unduly discriminatory behavior. Thus, under Part 284 of the Commission's regulations, the Commission has allowed differences in rates by permitting pipelines to discount rates for certain types of service and for certain customers.[41] The Commission has maintained that these differences in rates are justified if the discount is necessary to meet competitive circumstances and the customers are not in similar competitive positions.

Hadson asserts that the Commission has failed to explain how Commission rulings that prohibit restrictions on the resale of electric power as *per se* violations of the FPA,[42] and prohibit restrictions on the resale of natural gas as violative of NGA standards,[43] are consistent with its determination that resale restrictions on the sale of pipeline capacity are required under the NGA.[44]

Hadson's concerns are misplaced. The Commission has determined that non-dominant sellers of electric power cannot exercise market power.[45] Likewise, it has determined that markets for the sale of natural gas are sufficiently competitive that the market, subject to Commission oversight and intervention, serves to ensure that rates for the sale of these commodities are just and reasonable. To the extent this is true for primary sales of electric power and natural gas, the proposition is even more true with respect to resales of the commodities. Gulf States, *City of Florence* and their progeny address sales, not transportation, and the distinction is critical. Congress recognized the distinction when it deregulated wellhead prices. The level of competition that exists for the sale of natural gas has not been demonstrated to exist for the transportation of natural gas. If the market does not serve to ensure just and reasonable rates for the primary market one cannot simply assume that it will ensure just and reasonable rates for the secondary market.

Hadson also asserts that lifting cost-based caps and/or moving away from cost-based ratemaking for the transportation of gas by interstate pipelines will interfere with the goals of the NGA. Hadson's comments merely reiterate the reasons for using a market analysis as the starting point for evaluating any market-based rate proposal. Absent a showing that a particular company lacks market power or that sufficient regulatory safeguards, e.g., a cost-of-service fallback rate, can be implemented to eliminate the potential exercise of market power, the Commission would continue some form of cost-based ratemaking.[46] Where a company can show a lack of market power, then competition in the market would ensure that the company's rates will be just and reasonable. In either case, the goals and purposes of the NGA are met in that any rates that would be charged would be just and reasonable, either under a cost-based or a market-based analysis.

Hadson also asserts that *Farmers Union Central Exchange* v. *FERC*,[47] which affirmed the possibility of light-handed regulation of oil pipelines, recognized that the movement to light-handed regulation is justified only by a showing that the goals and purposes of the statute can be accomplished without traditional regulatory oversight. Hadson asserts that the staff paper does not address the potential for serious disruption of the industry in the event that a future Commission (or a reviewing court) decides to apply court rulings applicable for other regulated industries, such as the telecommunications industry, and require strict tariffing.[48] Hadson states that the Commission should either revisit its assertion of NGA jurisdiction over shippers (via blanket certificates) or assure the public that the procedures under which everyday business is conducted will not be confounded by a subsequent finding that the structure does not comport with the filed rate doctrine. Hadson is merely repeating arguments advanced in opposition to the Commission exercising its NGA jurisdiction over marketers. The Commission previously addressed these concerns when it reaffirmed that sales by marketers are resales subject to the Commission's NGA jurisdiction. These

[39] 734 F.2d 1486, 1509 (1991) *Farmers Union II.*

[40] See also, *Elizabethtown Gas Co.* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993) (*Elizabethtown*) (Court of Appeals affirmed Commission approval of market-based rates, under appropriate circumstances, as meeting the requirements of the NGA.)

[41] 18 CFR 284.7 (1995).

[42] *Citing,* Gulf States Utilities Co., 5 FERC ¶ 61,066 (1978) (*Gulf States*), Central Maine Power Co., 18 FERC ¶ 61,126 (19982); Louisiana Power & Light Co., 14 FERC ¶ 61,075 at 61,130–31 (1981); Central Telephone & Utilities Corp., 10 FERC ¶ 61,213 (1980); and Empire District Electric Co., 5 FERC ¶ 61,083 (1978).

[43] *Citing, City of Florence* v. *Tennessee Gas Pipeline,* 24 FERC ¶ 61,395 (1983) (*City of Florence*) (the Commission voided a restriction in a pipeline LDC contract on the resale of natural gas by the distributor).

[44] Hadson at 19.

[45] See, e.g., Louisville Gas and Electric Company, 62 FERC ¶ 61,016 at 61,143–4 and cases cited at footnote 16. (Non-traditional rates may be acceptable if the seller can demonstrate that it lacks market power over the buyer or has adequately mitigated its market power. The seller can demonstrate that it lacks market power (or has adequately mitigated its market power) by showing, among other things, that neither it nor its affiliates is a dominant firm in the sale of generation in the relevant market.)

[46] See the discussion of Negotiated/Recourse Rates below.

[47] 734 F.2d 1486, 1509 (1991) *Farmers Union II.*

[48] Hadson refers to a line of Federal Communications Commission cases which stand for the proposition that an agency should be mindful of specific statutory procedural requirements when it undertakes reform of substantive regulatory policies and programs. Citing, *MCI Telecommunications Corp.* v. *ATT,* _____ U.S. _____, 114 S.Ct. 2223 (1994) (*MCI II*), *Southwestern Bell Corp.* v. *FCC,* 43 F.3d 1515 (D.C. Cir. 1995) (*Southwestern Bell*), and *Maislin Industries, U.S. Inc.* v. *Primary Steel, Inc.,* 49 U.S. 116 (1990). Neither *MCI II* nor *Southwestern Bell* speak to the substantive validity of alternative, non-cost based, ratemaking methodologies. These cases address the methods of implementing statutory requirements for rate filings that agencies can legitimately employ. The cases do not speak to the methods of deriving the rates that ultimately must be filed. With respect to such methods, the doctrine advanced in *Hope* still applies.

issues need not be addressed again in this context.[49]

IPAA asserts that, assuming for the sake of argument alternative pricing methods could be sustained on appeal, some very specific statutory requirements with respect to filing and approval of rates and the prohibition against undue discrimination must be considered. Citing *Environmental Action* v. *FERC*[50] and *Transwestern Pipeline Co.* v. FERC,[51] IPAA maintains that a formula or rule means that something must be filed from which an actual rate can be calculated; a rate dependent solely upon the market does not qualify as a ''formula'' or ''rule.''

The Commission's implementation of market-based rates for pipelines and storage companies comports with the filed rate doctrine. The Commission has not attempted to eliminate tariffs, as was the case in the telecommunications industry, and does not do so here. Currently, for the few proposals that have been approved, the Commission has required the company to file tariff sheets for the service with market-based rates. The Commission will continue this practice in any future declaratory orders ruling on market-based rate proposals.

C. The Criteria

The Commission's framework for evaluating requests for market-based rates addresses two principal purposes: (1) Whether the applicant can withhold or restrict services and, as a result, increase price by a significant amount for a significant period of time, and (2) whether the applicant can discriminate unduly in price or terms and conditions. Undue discrimination is especially a concern when an applicant for market-based rates can deal with affiliates.

Before the Commission can conclude that a seller will not withhold or restrict services, significantly increase price over an extended period of time, or unduly discriminate, it must either (1) find that there is a lack of market power because customers have sufficient good alternatives or (2) mitigate the market power (i.e., permit market-based pricing only if specified conditions are met that prevent the exercise of market power). Market power is defined as the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.[52] To date, in all cases where the Commission has considered market-based rates, the applicant has been required to show that it lacks significant market power in the relevant markets. The staff paper set out a general framework for evaluating requests for market-based rates. The Commission now adopts this general framework, as discussed below, as its criteria for evaluating the competitiveness of transportation services.

The Commission's analysis of whether a pipeline has the ability to exercise market power will include three major steps: (1) Define the relevant markets; (2) measure a firm's market share and market concentration; and (3) evaluate other relevant factors. Each of these steps was articulated in the staff paper. They are discussed, with certain noted changes, again below.

1. Market Definition

The first step is to define the relevant market. Market definition identifies the specific products or services and the suppliers of those products or services that provide good alternatives to the applicant's ability to exercise market power. The term ''good alternatives'' has been defined as ''an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative'' for the applicant's service.[53]

a. The Product Market. The applicant's service together with other services that are good alternatives constitute the relevant product market. The Commission will require the applicant to define the product market fully and specifically. The applicant must also show how each of the substitute services in the product market are adequate substitutes to the applicant's service in terms of quality, price and availability. For example, the relevant product market may consist of off-peak interruptible transportation service only. The Commission will consider any substitutes for the relevant product that can be considered competitive alternatives, e.g., storage delivery services. Pipelines might suggest numerous alternatives to FT in their applications: IT, storage services, residual fuel oil, etc. A narrow definition of the product market, for example, peak period, firm transportation or off-peak, interruptible transportation, will better enable the Commission to critically evaluate the real alternatives that are available to the proposed service.

i. Timeliness. The definition of the product market may vary depending on the time period considered. For example, whether a service is a good alternative to a pipeline's interruptible service will depend on the time periods chosen for review. The staff paper noted that, although antitrust authorities have used one year as the time period in which to test whether a product can become a substitute, a one year time period was probably not appropriate for long-term firm transportation because capacity on competitors would typically need to be available simultaneously to offer a viable alternative to customers. Because long-term firm contracts typically do not offer customers the ability to shift between alternatives, the one year time period may not be appropriate.

A few commenters argue that the Commission should adopt a more strenuous timeliness criterion.[54] They assert that if the projected alternative capacity is delayed or is less than projected, customers should have the option of continuing to pay a traditional cost-of-service rate until workable competition exists.

The Commission will not define a specific time period within which a product must become available in order to be a substitute. The Commission believes that this determination is dependent upon the type of product services at issue. As more product services become available, the duration of service agreements is likely to vary considerably from the traditional 20-year firm transportation agreement. Therefore, the ability to establish whether a product is or can become a good alternative will depend upon the specifics of the product it is replacing. However, if a pipeline applicant relies on the existence of capacity that will not be available immediately, it should also show that its customers will not be committed to long term contracts on its system within the relevant time period.

[49] See, Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production, Docket No. RM94–18–001, 69 FERC ¶ 61,055 at 61,217 (1994), *appeal docketed sub nom. Hadson Gas Systems, Inc.* v. *FERC,* No. 95–1111 (D.C. Cir.).

[50] In *Environmental Action* v. *FERC,* 996 F.2d 401 (D.C. Cir. 1993) (*Environmental Action*), the proposed pricing plan was ruled to have been acceptable because there was a filed rate cap, and any discrimination was held to be potential.

[51] In *Transwestern* v. *FERC,* 897 F.2d 570 (D.C. Cir. 1990) (*Transwestern*), the Court determined that filing a ''rate 'formula' or rate 'rule''' can satisfy the filing requirements of Section 4; however, given the Court's ruling that the issue of market-based rates was moot in that case because there had been no customer nominations under Transwestern's program, the determination with respect to a rate formula or rule appears to be have been dicta.

[52] Enron Storage Company, 73 FERC ¶ 61,206 (1995); Williams Pipeline Company, 68 FERC ¶ 61,136 (1994); Avoca Natural Gas Storage, 68 FERC ¶ 61,045 (1994); Koch Gateway Pipeline Company, 66 FERC ¶ 61,385 (1994); Bay Gas Storage Company, 66 FERC ¶ 61,354 (1994); Transok, Inc., 64 FERC ¶ 61,095 1993); and Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992).

[53] Koch Gateway Pipeline Company, 66 FERC ¶ 61,385 at 62,299 (1994).

[54] Pa OCA and Ohio CC.

In this regard, customers should be given the option of reducing service demand levels once the alternative capacity and/or service becomes available.

ii. Price. Along with showing that alternative capacity will be available in a reasonable time frame, the Commission will also evaluate whether the price for the available capacity is low enough to effectively restrain the applicant from increasing prices. The price increase threshold is important because with a lower threshold it becomes ostensibly more difficult for a potential alternative to the applicant's service to be considered a good alternative. In prior cases, the Commission has defined such a threshold price level as being at or below the applicant's approved maximum cost-based rate plus 15 percent.[55]

Several of the commenters suggest that the 15 percent threshold for price changes is inappropriate.[56] They assert that a threshold at the 5–10 percent level is more consistent with current similar standards in the Department of Justice's merger guidelines. The Commission has studied the arguments made on this issue and we agree. Accordingly, the Commission will adopt a pricing threshold of 10 percent. The Commission believes that if a company can sustain an increase in its rates in the order of 10 percent or more without losing significant market share, the company is in a position to exercise market power to the detriment of the public interest.

Although the Commission is adopting 10 percent as its standard price change threshold, it is not precluding individuals from making an argument for either a higher or lower threshold in any particular case. Applicants are free to argue for a higher threshold where they believe circumstances permit. Similarly, participants in the application proceeding are free to argue for lower thresholds. The Commission will consider the arguments presented and make a determination of the appropriate price change threshold on an individual basis whenever the issue is raised. In cases where the issue is not raised, the Commission will use 10 percent as the applicable price increase threshold. In addition, when applicants propose an appropriate threshold for price increases, they should also propose the time period over which the price increase could be sustained.

iii. Quality. A good alternative must provide service in which the quality is at least as high as that of the service provided by the applicant. After the Commission has a full and complete description of the service(s) proposed for market-based rate treatment, it will evaluate whether any available third party capacity is comparable in service to the transportation service provided by the applicant.

In the aftermath of Order Nos. 436 and 636, the Commission believes that all interstate pipelines currently provide operationally comparable firm transportation service. However, even if a customer can find available capacity on an alternative pipeline, the overall package of services available may not be comparable to that it currently receives from the applicant. For instance, no-notice service may not be available from other pipelines (though a similar service may be available from third parties). Under Order No. 636, interstate pipelines that offered no-notice sales service prior to restructuring were required to offer no-notice transportation service to their existing sales customers at the time of unbundling. Pipelines had the option of making no-notice service available to customers who were not sales customers. Thus, while many interstate pipelines currently provide no-notice service, they do not and are not required to offer such service to new customers. Thus, comparable no-notice service may not be available on other pipelines.

Also, applicants may wish to demonstrate that intrastate pipelines offer comparable firm transportation service. Transportation services offered by intrastate pipelines under Section 311 of the NGPA are also subject to open-access and non-discriminatory access standards as interstate pipelines are under Order Nos. 436 and 636. Therefore, to the extent that intrastate pipelines offer firm transportation service, the Commission believes that such service could be offered under terms and conditions that are substantially comparable to the firm transportation services offered by open-access interstate pipelines. However, intrastate pipelines are not required to offer firm transportation services and currently only a few intrastate pipelines offer such service. Thus, firm transportation may not be available on intrastate pipelines. Where it is available, pipelines are free to argue that firm intrastate transportation service is a comparable alternative to services proposed for market-based rates.

Applicants wishing to make a showing that interruptible transportation services make good alternatives to the applicant's firm services should demonstrate that an adequate amount of capacity is unsubscribed during peak periods so that the quality of the IT service is comparable to that of the applicant's FT service.

2. The Geographic Market

In addition, in defining the market, the Commission will look to identify all the sellers of the product or service. The collection of alternative sellers and the applicant constitutes the relevant geographic market. Specifying the relevant product and geographic market tells the Commission what alternatives the customer has if it attempts to avoid a price increase imposed by an applicant. Geographic market definition is particularly important in transportation markets. Gas pipelines can transport gas out of a producing or origin region. They also deliver gas into a consuming or destination region. The Commission will identify both the origin and destination markets for the relevant service. Only in that way can the Commission evaluate whether there are good alternatives to the pipeline's service.

The Commission expects that typical proposals will adopt a two-step process of defining the geographic market. First, the applicant will identify those alternative sellers who offer service between the same origin and destination markets. Second, the applicant will identify those competitors that provide service either out of the origin market or into the destination market.

a. Transportation Between Markets. The first stage of the analysis identifies sellers offering transportation service over the same route. Examining different sellers serving the same transportation link simplifies the analysis. For instance, there is no need to consider whether different producing areas offer ''good'' alternatives to each other.

To show that another pipeline provides a good direct alternative, the applicant must show that customers could purchase the relevant service from the alternative supplier. Such a demonstration will likely include showing that capacity would be available on the alternative and that the customer can obtain any services

[55] In Buckeye Pipe Line Company, L.P., Opinion No. 360, 53 FERC ¶ 61,473 at 62,61 (1990), order on reh'g, Opinion No. 360–A, 55 FERC ¶ 61,084 (1991), the Commission held that a 15 percent increase was an appropriate level to measure market power. However, in Williams Pipe Line Co., Opinion No. 391, 68 FERC ¶ 61,136 at 61,657, the Commission declined to adopt a specific rate increase as a litmus test for market power. In Koch Gateway Pipeline Company, 66 FERC ¶ 61,385, the Commission suggested that potential alternatives would include services that though presently not used, would be economic if prevailing prices were to rise by a modest amount, e.g., five to fifteen percent.

[56] Industrial Gas Consumers, NI-Gas, UDC, Alberta, and Illinois.

needed to use the competitor's facilities in both origin and destination markets over the term of the service receiving market-based rates.

If a customer has a continuing obligation to take gas at a particular receipt point, or to deliver gas to a specific delivery point, beyond the term of its FT contract, competition from parallel pipelines is particularly important in evaluating market power on a pipeline seeking market-based FT rates. In these circumstances, the applicant may have market power over the shipper even if both the origin and destination markets are otherwise competitive. While the shipper will have good alternatives to the applicant for getting to the city-gate, it may not have good alternatives for getting gas from the shipper's particular receipt point to its city-gate. It could of course, sell its contract gas from that particular point on the spot market in the production area and buy an equal amount of spot gas in an area where it had good transportation alternatives. But the spot price at which it sells might be lower than the spot price at which it buys, causing extra expense and providing some opportunity for the applicant pipeline to raise its price. Additionally, the shipper may value the reliability of the contract gas and be concerned that it might not be able to buy spot gas when it needs it.

b. Transportation at Origin and Destination Markets. Parallel route competition is not the only source of market discipline on gas transporters. A shipper in the production area will typically have alternative destination markets to which it could send gas. Similarly, a downstream shipper will typically have a choice of several producing areas from which to buy gas. Pipelines that provide such alternative service may offer an additional check on the market power of a shipper.

Natural gas transportation typically originates in the production area. In the production area (or the mainline receipt point), the applicant must identify the transportation alternatives available to customers. Customers could include producers with gas supplies attached at a receipt point, LDCs, and endusers with firm long-term supply contracts. To define a particular region as an origin market, the pipeline must identify all pipelines which compete with it to move gas out of that area. As a general matter, to demonstrate that these other pipelines are good alternatives (that is, are in the market) the applicant must show that its producer/shippers are physically connected to these other pipeline transporters. Alternatively, the applicant could include an alternative pipeline in the market if it can connect to the producer/shipper sufficiently cheaply that the producer/shipper receives a netback [57] at least as large as it would receive if it used the applicant's transportation service. The applicant must also show that these transportation alternatives provide a netback to producer/shippers roughly the same as they would receive if they used the applicant's transportation. An alternative is not a good alternative to a producer seeking to move gas out of the origin market if the alternative is associated with a much higher cost than the applicant's cost-based rates, in other words, it must give roughly the same netback.

Koch Gateway argues that a good alternative does not necessarily have to be physically connected to a pipeline. The Commission agrees. Although typically an applicant will have to demonstrate that its customers are physically connected to alternative gas transportation facilities that move gas into the area, the Commission will allow flexibility and permit applicants to argue that even if the customer is not physically connected to the alternative, it can serve as good alternatives to the proposed service.

Applicants for market-based rates might allege that liquified petroleum gas (LPG) and liquified natural gas (LNG) can be good alternatives to the use of an applicant's transportation service. If so, the applicant must show that there are sufficient quantities of these available, and that LPG and LNG can be transported into the destination market (e.g., by truck) at an overall delivered price that is equal to or less than the overall delivered price the applicant pipeline would charge to deliver natural gas. The prices considered here must be within the pipeline's price increase threshold.

Thus, in order to specify a gas transportation market, the applicant must first identify all products and services available as good alternatives to the applicant's customers. Next, the applicant must identify the origin and destination of that transportation. The relevant geographic market will be defined in two steps: first, those alternative sellers that offer service between the same origin and destination markets and second, all economically substitutable transportation sold by pipelines (or other good alternative products and services) serving either the origin market or the destination market.

Pipelines might be able to exercise market power if customers have few good alternatives to the pipeline's service either, in the first instance over a given route or, in a second analysis, separately in origin and/or destination markets. The applicant might have market power in the origin market if producer/shippers have few good alternatives to transport their product out of the origin area. In the destination market, pipelines might be able to exercise market power if downstream customers have few good transportation alternatives that reach their city-gates. If customers have long term supply contracts, it will be particularly important for the pipeline to demonstrate that it has no market power over customers on a given route.

3. Firm Size and Market Concentration

There are two ways in which a seller can exercise market power. It can attempt to raise its price acting alone or it can attempt to raise its price by acting together with other sellers.

a. Acting Alone. One of the indicators that has been examined to determine whether a seller could exercise market power acting alone is the seller's market share. A large market share is generally a necessary condition for the exercise of market power. If the seller has a small market share it is unlikely that it can exercise market power. But, a company with a large market share may not be able to exert market power if entry into the market is easy [58] or there are other competitive forces at work.

The applicant must submit calculations (and supporting data) of its market share in all relevant path or origin and destination areas.

b. Acting Together with Other Sellers. A second way in which a seller can exercise market power is to act together with other sellers to raise prices. To evaluate whether a seller can act together with others to exercise market power, the Commission typically has examined the market's concentration.

To measure market concentration, one generally considers the summary measure of market concentration known as the Herfindahl-Hirschman Index (HHI). If the HHI is small then one can generally conclude that sellers cannot exercise market power in this market. A small HHI indicates that customers have sufficiently diverse sources of supply in

[57] The netback is the delivered price of gas less the transportation costs paid by the producers. That is, the netback is the net price received by the producer.

[58] Given the nature of the interstate pipeline industry, ease of entry would be difficult to show except in cases involving minor facilities. For major facilities, the cost of construction and the time needed for environmental analysis and certification would suggest that entry may not be easy.

this market that no one firm or group of firms acting together could profitably raise market price. If the HHI is higher then additional analysis may be needed to determine if the seller can exercise market power.

The Commission will analysize the HHI calculation for the relevant markets. The HHI will be evaluated for each relevant path and/or origin market and each destination market utilizing the relevant data for each mainline receipt point (origin market) and each delivery point (destination market). If an applicant wishes to argue for either a broader or narrower market definition, it should also include calculations for its market definitions. Only sales or capacity figures associated with good alternatives should be used in calculating the HHI. In addition, applicants should aggregate the capacity of affiliated companies into one estimate for those affiliates as a single seller.[59]

In the gas inventory charge (GIC) cases, the Commission established a threshold level for the HHI at .18.[60] An HHI at this level indicates that there are four to five good alternatives to the applicant's service in each of the relevant markets. In an oil pipeline case, the Commission used a slightly higher HHI of .25 as an initial screen.[61]

Several commenters suggested that the HHI should be raised. Suggestions ranged from 0.25 to 0.35.[62] Others argued that the Commission should not adopt an arbitrary numerical threshold of concentration but should do a thorough review of actual market conditions on particular pipeline systems instead.[63]

The Commission will not adopt a rigid brightline threshold level for the HHI, below which an applicant would automatically qualify for market-based rates, or above which an applicant would be excluded from market-based rates. Rather, the Commission will use 0.18 HHI as an indicator of the level of scrutiny to be given to the applicant. If the HHI is above 0.18, the Commission will give the applicant closer scrutiny because the index indicates that the market is more concentrated and the applicant may have significant market power. An HHI below 0.18 would result in less scrutiny of the applicant's potential to exercise significant market power because it would indicate that the market is less concentrated.

The Commission is primarily concerned about whether an individual applicant seller (including affiliates) can exercise market power. The HHI will be one of the factors that the Commission will evaluate. However, market shares and HHIs alone do not give a comprehensive view of all important factors. The impact of other competitive factors on the Commission's analysis of market-based rate proposals is discussed below.

4. Entry and Other Competitive Factors

Even if the applicant's market share were large in a concentrated (and properly identified) market, one still might not conclude that the applicant would be able to exercise market power. For example, if the applicant increased its price, entry into the market might be so easy that sellers attracted by the profit opportunity created by the higher price would quickly take customers away from the applicant by offering a lower price. This would make the applicant's price increase unprofitable. Thus, the applicant would not be able to exercise market power, despite its large market share and despite the high market concentration.[64] Ease of entry is one of several competitive factors that might lead to the conclusion that an applicant lacks market power. It is most likely to apply to circumstances that do not require the large sunk costs of major construction—for instance, perhaps in offering short-haul market center services.

Another competitive factor that might be established by an applicant would be the presence of buyer power. An applicant might argue that if a single buyer is a large customer of the pipeline, is knowledgeable and sophisticated in its buying, and has been in business for a lengthy period of time, the buyer may have the knowledge and large-scale purchasing power to negotiate reasonable rates even in a concentrated market. However, just because buyers develop sophisticated purchasing systems and market knowledge as the result of dealing with various suppliers in numerous markets, there still is reason to have some skepticism that a buyer in a single destination area served by one or a few pipelines will have such capabilities.

The Commission will evaluate whether sufficient quantities of good alternatives are available to the applicant's customers to make a price increase unprofitable. In other words, are customers able to replace a significant proportion of their throughput with other transportation alternatives if the applicant were to raise its price?

There may be cases where an applicant has completed its own analysis of its market-based rate proposal using the criteria stated above and concludes that it cannot, under existing circumstances, establish that it lacks market power with respect to its proposed service. Yet, the company may be able to identify certain conditions or changes that it could implement to mitigate the effects of market power and make market-based rates a viable option. In such cases, the Commission would be willing to evaluate proposals for any conditions or changes that the applicant would propose as mitigation for its potential exercise of market power.

For example, a pipeline might suggest that the Commission permit market-based rates for pipeline segments, such as for new laterals for new service. In order to mitigate its market power and thereby make itself eligible for market-based rates for service provided on that lateral, the applicant might propose to refrain voluntarily from allocating costs attributtable to the lateral to its other, cost-of-service based services. The applicant might also voluntarily agree to an open tap policy for services provided on the lateral. Under such a policy the applicant (in return for getting permission from the Commission to charge market-based rates) would agree to allow any entity to interconnect with its facilities. Such an open tap policy would help protect against withholding capacity by undersizing or overpricing the new lateral. The interconnection would be for the purpose of producing potential competitive suppliers to the services for which the applicant seeks market-based rates. Thus, the interconnection could be (depending on what the applicant is proposing) for a lateral, a loop, an extension, or any other facilities that could compete with the applicant's market-based services.

Applicants proposing such conditions or changes should state so specifically in their proposals.

D. Filing Procedures

The Request for Comments asked whether the Commission should continue its current policy of using declaratory orders for ruling on market-

[59] The capacity on pipeline systems owned or controlled by the applicant's affiliates should not be considered among the customer's alternatives. Rather, the capacity of an applicant's affiliates offering the same product are to be included in the market share calculated for the applicant. Similarly, alternative pipelines must be aggregated with their respective affiliates in order to identify meaningful alternatives to customers.

[60] El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989). See also Buckeye, 53 FERC at 62,667.

[61] See Williams Pipe Line Co., Opinion No. 391, 68 FERC ¶ 61,136 (1994).

[62] AGD, Cove Point, INGAA, Tejas, ANR/CIG, and Brooklyn Union.

[63] Brooklyn Union and KN Interstate.

[64] As stated before, entry would probably only be relevant for gas pipelines in the case of minor facilities such as facilities that could be constructed under a blanket certificate.

based rate proposals, or if some other procedural avenue was more appropriate. Several commenters support continuing the current practice of issuing declaratory orders.[65] Others suggest that full evidentiary hearings are required in at least some, if not all, cases.[66] However, the majority support a case-by-case review of proposals with the Commission issuing an order on the proposal as appropriate.[67]

The Commission will continue its current policy of using declaratory orders to rule on requests for market-based rates on a case-by-case basis. In cases where a certificate of public convenience and necessity is required, the review will occur as part of the certificate process.

Applying the criteria stated in the sections above, applications for market-based rates should contain the following information: (1) A detailed description of the service(s) proposed for market-based rate treatment; (2) a statement defining the relevant product and geographic markets necessary for establishing that the applicant lacks market power with respect to the particular service(s) at issue. Such statement should state the relevant time period for comparing services within the product and geographic markets; an analysis describing how the prices for relevant alternative services compare to the relevant price increase threshold; and a detailed description of good alternatives to the proposed service(s); (3) market share and HHI calculations; and (4) discussion of other relevant competitive factors and their import. In addition, pipelines should include in each application a proposal for accounting for the costs and revenues resulting from the proposed service. An application should be sufficient to establish on its own, without further inquiry or support, that the proposed service or services meet the criteria for market-based rates presented in this policy statement.

Applications for market-based rates will be noticed in the Federal Register. Interested parties will have an opportunity to intervene in the proceeding and to present a response to the proposal. The Commission will consider the information provided in the application, any information provided by intervenors in response thereto, and will take any intermediate steps, including issuing data requests or convening a technical conference, that may be necessary to complete its evaluation of the proposal. The Commission will either conduct a paper hearing, based upon the initial filing and responses thereto, or set the matter for a formal evidentiary hearing before an administrative law judge, as appropriate. Upon completing its evaluation, the Commission will issue a declaratory order ruling whether the service meets the requirements of market-based rates. If the service meets the standards then the applicant can make the appropriate tariff filing necessary to set its market-based rates into effect. Commission approval of market-based rate proposals will be prospective only, thus eliminating concerns regarding refund liability. The Commission's determinations in these circumstances will be based upon the facts presented in the proposal. Accordingly, the Commission may reconsider its ruling should the circumstances on the pipeline change such that market-based rates are no longer appropriate.

IV. Policy on Incentive Rates

In circumstances where market-based rates are not appropriate, the Commission will continue cost-based rate regulation. In October 1992, the Commission issued a Policy Statement on Incentive Regulation to allow companies that have market power nevertheless to receive some of the benefits of greater flexibility and efficiency that are associated with market-based rates.[68] Incentive rate proposals, while cost-based, are intended to result in better service options at lower rates for consumers while providing regulated companies with the opportunity to earn higher returns. Incentive regulation is not intended for competitive markets. It is intended for markets where the continued existence of market power prevents the Commission from implementing light-handed regulation without harm to consumers. The Commission continues to believe that incentive rate mechanisms have potential to benefit both natural gas companies and consumers by fostering an environment where regulated companies that retain market power can achieve greater efficiency and cost-effectiveness.

In the Policy Statement, the Commission explained that incentive regulation differs from traditional regulation in that it fosters long-term efficiency. It accomplishes this by: (1) divorcing rates from the underlying cost-of-service, (2) lengthening the period between rate cases; and (3) sharing the benefits of cost savings between consumers and stockholders on a current basis. The Commission set out five criteria that incentive rate proposals must meet to gain Commission approval. Under the policy adopted in 1992, proposals for incentive rate programs must: (1) Be prospective; (2) be voluntary; (3) contain incentive mechanisms that are understandable to all parties; (4) result in quantified benefits to consumers; and (5) demonstrate how they maintain or enhance incentives to improve the quality of service. Each of these criteria were discussed at length in the Policy Statement. After articulating the criteria to be utilized in evaluating proposals for incentive rate proposals, the Commission invited companies to submit such proposals for consideration.

Since the issuance of the Policy Statement, the Commission has not received any requests for approval of incentive rate proposals. For this reason, and in light of the changes in the natural gas market that have occurred as a result of the implementation of Order No. 636, the Commission decided to revisit the issue of incentive rates for pipeline services. Therefore, in the Request for Comments, the Commission sought responses to specific questions regarding its incentive rate Policy Statement. These questions included: (a) why there have not been any incentive proposals under the policy established in Docket No. PL92–1–000; (b) whether the Commission should change its existing standards for incentive rate proposals; (c) if so, what specific criteria the Commission should employ when evaluating incentive rates; (d) whether there are models for incentive regulation that the Commission should consider, such as the California performance-based program; (e) what the benefits and drawbacks of incentive rates are, and what policy objectives the Commission should pursue with an incentive rate method; and (f) whether incentive ratemaking is appropriate for the natural gas companies regulated by the Commission.

Many of those responding to questions regarding the Commission's current standards for evaluating incentive rate proposals favor changing the current standards. Specifically, the majority of those pipelines that

[65] NI-Gas, SoCalGas, Columbia, KN Interstate, Koch Gateway, PEC Pipeline Group, Florida, and Transok.

[66] Petrochemical Energy Group, APGA, Northern Distributors, Wisconsin Distributors, Indicated Shippers, NGSA, Illinois, and Ohio CC.

[67] Fuel Managers, Industrial Gas Consumers, CINergy Gas Companies, Columbia Distribution, Northern Distributors, Northern Indiana, SoCalGas, UDC, ANR/CIG, CNG, Koch Gateway, NorAm, PEC Pipeline Group, Williston Basin, Texaco, and Ohio CC.

[68] Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 (1992).

responded encourage a change in the standards away from ''quantifying'' benefits to customers and eliminating the cost-of-service cap on incentive rates.[69] Commenters also encourage elimination of the requirement that rates under incentive programs could be no higher than they would have been under traditional cost-of-service regulation.[70]

The Commission has reviewed the comments and re-evaluated its existing policy in light of current conditions in the natural gas industry. Based on these comments, the Commission recognizes that it is problematic to compare incentive-based rates with existing cost-of-service rates or with what rates would have been under cost-of-service pricing after incentive-based regulation is implemented. Comparisons of incentive-based rates with previous cost-based rates compare service and rates in different time periods.

Moreover, the ability of pipelines to profit from cost reductions remains a key ingredient of most incentive-based options. Imbedded in the typical incentive-based proposal is the expectation that, over time, this ability to profit will drive industry costs down and therefore lead to rates that are lower than they would have been under traditional cost-based regulation. In consideration of all of these points, the Commission believes it is appropriate to modify its existing policy.

In reply to the Request for Comments, INGAA, six pipelines, and the Alberta Regulatory Commission suggested elimination of the requirement to quantify benefits. Also, five pipelines specifically recommended that the Commission eliminate the requirement that rates under incentive regulation be no higher than they would have been under traditional cost-of-service regulation. The Commission agrees with these recommendations. Although both quantifiable benefits and comparisons shall remain two of the goals of any incentive rate program, these requirements are eliminated from the Commission's stated criteria for evaluating incentive rate proposals. Instead of requiring firms to quantify the benefits of any performance-based proposal, the Commission will require pipelines proposing such programs to share with their ratepayers the efficiency gains of the program. Any pipeline proposal must explicitly specify the performance standards it defines, the mechanism for sharing benefits with customers, and a method for evaluating the proposal. Pipeline companies are invited to submit proposals that fulfill these requirements as well as the three other criteria articulated in our prior Policy Statement.

Commenters also encouraged the Commission to require participation in any proposed incentive rate program continue for a prescribed period of time, such as four or five years. Commenters argue that this will prevent individual pipelines from moving in and out of incentive rate programs in an attempt to game the system.

The current policy states that the fact that incentive regulation is voluntary,

> does not mean that utilities should be completely free to abandon their programs should their profits decline. Such a policy could encourage inefficient investments in risky cost-cutting innovations, and it would be unfair to consumers. Instead, programs may include conditions under which utilities could opt out after an initial commitment.[71]

The Commission later stated that the exact period of time between rate reviews under incentive rate programs would be decided on a case-by-case basis.[72]

The Commission is not inclined to prescribe in this policy statement a length of time during which performance-based rate proposals must be operative. The particulars of any one program are likely to be so company specific as to make such a requirement impractical. Nevertheless, the Commission is no less committed to the requirement that pipelines agree to operate under such programs for a specified period than it was at the time of the original policy statement. Therefore, the Commission clarifies that approval of an incentive rate program proposal will require a commitment by the pipeline that it will continue in the program for a specified length of time as appropriate for the particular pipeline system at issue. Proponents of such proposals should suggest a desired duration for operation under any proposed incentive plan along with arguments supporting the proposal.

The Commission will consider on a timely basis incentive rate proposals filed under the revised criteria. Such proposals may take a variety of forms.[73] The considerable state regulatory activity in developing performance and incentive-based ratemaking mechanisms attests to the vitality of such approaches. Incentive rates may be usefully developed by pipelines and their customers as a means of reaching long-term accord on some of the difficult issues now confronting the industry. Alternative dispute resolution may also play an important role in achieving agreement on system-wide incentive rates, and the Commission supports such efforts.

The Commission is setting forth a policy for market-based rates today. The incentive rates policy is still emerging. The Commission encourages pipelines to file new incentive or performance-based rate proposals and concepts for Commission consideration.

V. Negotiated/Recourse Rates and Terms of Service

A. The Proposals

Where pipelines do not attempt to establish a lack of market power and do not want to undertake an incentive rate program, there are yet other alternatives to traditional cost-of-service regulation that could be used. In the Request for Comments, the Commission sought comment on other ratemaking methods that would better serve the goal of flexible, efficient pricing in today's environment. Included in the Commission's request were ''backstop proposals, where pipelines would be free to negotiate rates and terms of service, so long as customers could always choose service under traditional cost-of-service rates and terms of service.'' [74]

In its initial comments INGAA proposes negotiated rates and terms for service as an option. Under INGAA's plan, the Commission would dispense with cost-of-service regulation for an individual shipper when mutually agreed upon by the pipeline and a shipper and permit negotiated rates and terms and conditions of service that could vary from the pipeline's otherwise applicable tariff. A recourse service that is on file in the pipeline's tariff would always be available for those shippers preferring traditional cost-of-service rates and services.

As originally proposed by INGAA, the recourse rate would escalate the recourse rate based on a pipeline industry index, less a one percent productivity factor. INGAA proposed that the Commission modify its current incentive policy statement to eliminate the cost-of-service cap and the quantifiable benefits test. Subsequently, INGAA changed its proposal to make the index component voluntary and optional. INGAA claims the recourse rate, which would be established

[69] WINGS, NorAm, Williston Basin, Alberta, ANR/CIG, Columbia, Enron and INGAA.

[70] INGAA, WINGS, Enron, and NorAm.

[71] Policy Statement, 61 FERC at 61,589.

[72] *Id.*, at 61,603.

[73] Incentive Regulation for Natural Gas Pipelines: A Specific Proposal with Options, OEP Technical Report 89–1, September 1989; Incentive Regulation: A Research Report, OEP Technical Report 89–3, November 1989.

[74] 70 FERC at 61,394.

initially through a Section 4 rate case, would be lower than a cost-based rate, over time, through the workings of the productivity adjustment. While INGAA provided a detailed discussion of its indexing proposal, initially few details were provided on the scope of negotiated rates and terms and conditions.

Brooklyn Union and PSE&G also endorsed negotiated rates backstopped by a recourse rate in their initial comments. Both parties emphasized the recourse rate would be for traditional tariff service priced on a cost-of-service basis and protected from adverse rate or operational impact from the individually customized services.

B. Comments on INGAA's Proposal

In response to INGAA's proposal, AGD, Brooklyn Union, and UGI, while generally supporting negotiated/recourse rates, object to INGAA's proposal to index the recourse rate. These parties ask the Commission to allow negotiated/recourse rates as soon as possible without complicating matters by tying the negotiated/recourse rate concept to incentive rates. AGD and UGI also express concerns that recourse rate payers should be protected from cost shifting or degradation of their service resulting from negotiated rates.

NGSA and IPAA oppose INGAA's negotiated rate proposal contending it would allow the pipeline to use its market power to discriminate among its customers by providing additional service benefits to some customers and denying them to others. Further, they argue that, if the negotiated service agreements were not filed with the Commission, it would be difficult to obtain the necessary facts to support a discrimination complaint.

AGD, Brooklyn Union, and NGSA/IPAA object that INGAA's incentive rate proposal does not provide for a sharing of efficiency gains. NGSA and IPAA support the Commission's current incentive rate policy statement requiring quantification of consumer benefits.

In a September 25, 1995 filing, INGAA clarified its proposal to emphasize that it would be voluntary, there would be no cost shifting, and it would be up to individual pipelines whether to propose indexing of the recourse rate. INGAA also suggested that pipelines would file a form of notice for negotiated rates, similar to transportation discount reports, identifying the customer, the negotiated rate or formula, the recourse rate, and contract quantity and duration. According to INGAA, the Commission would resolve complaints about discrimination, undue affiliate preference, or deleterious effects on other services. In a November 7, 1995 filing, INGAA further clarified its proposal stating that SFV is not affected because its proposal leaves any existing SFV rate design in place.[75] INGAA adds that the Commission's scrutiny of costs and allocation plans during the rate cases that will establish recourse rates will assure that these rates do not contain unapproved cross subsidies. INGAA asserts that competition will provide the necessary quality assurance and that the recourse rate will be on file with the Commission and will thereby meet the NGA's filing requirement. INGAA contends that its proposal calls for filing information on the negotiated transactions, similar to the data required by Order No. 581 for discount rates and that required for the index of customers, after the negotiations are concluded. In this way INGAA asserts that the negotiated/recourse rates can comply with the requirements of the NGA while meeting the need of certain customers to keep key data in the negotiated rate proprietary to protect their competitive positions.

In response to INGAA's November 7 filing, NGSA argues that it would be inappropriate for any action to be taken on ''recourse rates'' by the Commission in this docket without providing other parties an opportunity to examine and comment fully on INGAA's new proposal. NGSA states that INGAA's proposals raise serious questions as to whether they would achieve the essential goals of bringing greater efficiency and competition to the interstate natural gas transportation industry while protecting all customers from the exercise of market power, undue discrimination, and cross subsidization. NGSA states that INGAA's proposal is lacking in critical details and therefore requires additional study and comment.[76]

A group of industrial end-user trade associations[77] also responded to INGAA's November 7 filing. The Industrials urge the Commission to reject INGAA's negotiated/recourse rate proposal. The Industrials criticize INGAA's proposal suggesting it would lead to market-based rates in a market lacking workable competition, and would result in ''severe damage to the objectives of Order No. 636 and the overall policy of developing an integrated transportation grid''. The Industrials strongly support SFV rates as key to a robust secondary market and fear that negotiation of non-SFV rates will lead to a hodge-podge of individual rates and services, encourage LDC's to hoard capacity, and ultimately impede producers and end-users from accessing interstate capacity.

C. Discussion of Negotiated/Recourse Rates and Services

The Commission believes that negotiated/recourse service programs could be a viable way of achieving flexible, efficient pricing when market-based rates are not appropriate. Negotiating different rates and service terms for individual shippers could result in wide flexibility in service offerings including individually tailored seasonal service and rates, short-term services, or special rates for more flexible terms and conditions. Greater rate flexibility has previously been tied to a showing that a pipeline lacks market power. Under this method, however, the availability of a recourse service would prevent pipelines from exercising market power by assuring that the customer can fall back to cost-based, traditional service if the pipeline unilaterally demands excessive prices or withholds service. Thus, the recourse rate mitigates market power. At a minimum, negotiated/recourse services offer the potential for increased market responsiveness in pipeline services without protracted disputes regarding market power.

Although the proposal as presented by INGAA and others has many attractive features, it raised a number of concerns as well. The first issue of concern involves associating negotiated/recourse proposals with incentive/performance-based programs. As stated previously, INGAA's original proposal called for recourse rates to be indexed. The Commission is concerned that choosing an appropriate index will be extremely problematic. Questions regarding whether it is appropriate to index recourse rates and what, if anything, would be an appropriate index to use must be addressed prior to a pipeline implementing such a proposal.

Another concern involves situations where the availability of the recourse service alone is not sufficient to mitigate a pipeline's exercise of market power. In its response to INGAA's initial proposal, NGSA expressed its concern that the

[75] A just and reasonable recourse rate would be derived using traditional cost-of-service rate methodologies including SFV.

[76] On January 23, 1996, NGSA further supplemented its response and clarified the goals it believes alternative rate proposals must meet to be successful.

[77] The Petrochemical Energy Group, Process Gas Consumers and the Georgia Industrial Group, Chemical Manufacturers Association, American Iron and Steel Institute, American Forest & Paper Association, Council of Industrial Boiler Owners, Praxair Inc., and the California Manufacturers Association (''The Industrials'').

availability of customized terms and conditions would be at the sole discretion of the pipeline. The pipeline would thus be in a position to discriminate among its customers in providing enhanced service flexibility, argues NGSA, favoring affiliates or customers who, for whatever reason, were able to obtain a negotiated deal with the pipeline. NGSA's concerns will be further considered in the separate proceeding discussed below. The Commission is also concerned about the extent to which the concept of negotiated terms and conditions of service is compatible with the requirements, goals and objectives of Order No. 636. Specifically, what effect, if any, negotiated terms of service are likely to have on: capacity release; flexible receipt and delivery points; the use of secondary receipt and delivery points; and no-notice transportation service. For example, if a pipeline agrees to provide a shipper priority of service at certain points, or additional flexibility in exchange for a higher rate, what effect would this have on other shippers served under the recourse service?

The Commission is particularly concerned about maintaining the integrity of the recourse service. In order to be successful, the recourse service must remain a viable alternative to negotiated service. Otherwise, if the recourse service remains stagnant, in time, the recourse service will become outmoded and will cease to be a viable alternative to negotiated service. Since the purpose of the recourse service is to act as a check against pipeline market power, such a result is impermissible. Therefore, some means may be needed to ensure the continued viability of the recourse service. The Commission is concerned about how this would be accomplished and whether any specific conditions concerning recourse services are needed.

Since open access transportation began, the Commission has required flexibility in terms and conditions to be offered on a non-discriminatory basis uniformly to all shippers under a given rate schedule. When competitive pressure forces a pipeline to liberalize its tariff to satisfy a few shippers, the tariff is amended and all shippers enjoy the benefits. To date the Commission has not permitted narrow classification of customer groups. If the Commission permitted the negotiation of terms of service pipelines would be able to offer special flexibility to selected customers. In that case, what standards, if any, would the Commission use to determine what constitutes undue discrimination? Likewise, are explicit new restrictions needed to prevent pipelines from tying access to a negotiated premium service to the use of the pipeline's other services as well as new restrictions from granting affiliate preferences necessary?

Finally, the Commission is concerned that negotiated/recourse proposals meet the requirements of Section 4 of the NGA. To satisfy the requirement in the NGA that rates, terms and conditions of service must be on file with the Commission, some form of filing the negotiated rate and terms of service will be necessary.

D. Proposals for Negotiated/Recourse Services

As stated previously, negotiated/recourse programs may serve to add flexibility and efficiency to pipeline services in cases where a company does not apply for market-based rates for its services and does not wish to pursue incentive rate programs. For this reason, the Commission is willing to entertain, on a shipper-by-shipper basis, requests to implement negotiated rates where customers retain the ability to choose a cost-of-service based tariff rate. The Commission already permits individualized rates under its rate discount policies. In allowing the further negotiation of rates, the Commission is confident that there are a number of mechanisms available to permit this added flexibility while ensuring that inappropriate cost shifting does not take place.

Requests to implement negotiated rates may be made for new or existing contracts. Companies making such requests must use their existing Commission approved tariff rates applicable to the service as their recourse rate unless they are filing a new rate case simultaneously. The recourse rate will be available for existing capacity holders that do not negotiate a rate with the pipeline, thereby ensuring that existing customers will always have a cost-of-service based rate available for capacity they have under contract. Specifically, this policy statement does not change the right of first refusal requirements in section 284.221(d)(2)(ii) that the highest rate that an existing shipper must match if it wishes to continue its transportation arrangement is the maximum recourse rate established in the pipeline's tariff.

A question arises when capacity is constrained. The predicate for permitting a pipeline to charge a negotiated rate is that capacity is available at the recourse rate. For purposes of allocating capacity, shippers willing to pay more than the maximum recourse rate would be considered to have paid the maximum recourse rate. Therefore, a shipper willing to pay only the recourse rate cannot lose access to capacity merely because someone else is willing to pay a negotiated rate. When there are more requests for capacity than there is capacity available, then the pipeline must allocate capacity among those shippers willing to pay either the negotiated rate or the maximum recourse rate, for example on a *pro rata* basis if required by its tariff.[78] This *pro rata* allocation would also apply to situations where the pipeline must allocate limited capacity for such services as interruptible transportation.

Because pipeline tariffs state that the pipeline will charge a rate between the maximums and minimums stated on the rate sheets, pipelines will need to file conforming tariff sheets indicating that the rate for the service will be either the rates stated on its existing rate schedule or a rate mutually agreed upon by the pipeline and its customer. When a rate is negotiated, the pipeline will need to file a numbered tariff rate sheet stating the exact legal name of the customer and the negotiated rate for the service. A pipeline may make the conforming change to its tariff to indicate that the rate may be a negotiated rate, either at the time it requests to put a particular negotiated rate into effect or at some earlier time. In addition, pipelines should also include along with the conforming tariff change, a proposal for accounting for the costs and revenues resulting from the proposed service.

A pipeline may file the numbered tariff sheet implementing the negotiated rate at the time it intends the rate to go into effect. The Commission does not intend to suspend the effectiveness of negotiated rate filings or impose a refund obligation for those rates. For these reasons, the Commission will readily grant requests to waive the 30 day notice requirement. Issues regarding the appropriate allocation of costs between recourse rate shippers and negotiated rate shippers will be addressed fully in the pipeline's Section 4 rate cases.[79] At that time, the Commission will consider issues

[78] If a pipeline has 100 dth of available capacity and there are two shippers who request that capacity, one is willing to pay no more than the recourse rate of $5.00/dth and another a negotiated rate of $6.00/dth, then each would be allocated 50 dth on a *pro rata* basis.

[79] The Commission recognizes that not all pipelines currently have a requirement to file a Section 4 rate case. For those pipelines that elect to charge negotiated rates and are not required to file a Section 4 rate case, the Commission may consider, on its own motion or on complaint by a recourse shipper, using its Section 5 authority to investigate whether the pipeline's recourse rates remain a viable cost-based alternative to negotiated rates.

relating to cross-subsidization and interested parties will be able to raise any concerns they may have regarding the proper allocation of costs. Therefore, the Commission does not intend to review a pipeline's negotiated rates at the time filed. However, customers that wish to argue that they are similarly situated with a customer receiving a negotiated rate and that a pipeline has been unduly discriminatory may file a complaint with the Commission at any time. The Commission will use its authority under Section 5 to investigate the complaint and, if a remedy is appropriate, will order a prospective rate change.

Pipelines are reminded that, pursuant to Sections 284.8(b) and 284.9(b), they are expected to negotiate rates with their customers in a manner that is not unduly discriminatory and that treats similarly situated shippers similarly. In addition, customers electing the recourse rate should be no worse off as a result of the use of negotiated rates than they would be absent the use of negotiated rates. Pipelines offering negotiated rates will have the burden of justifying revenue projections from negotiated services if the pipeline's method of achieving such projections deviate from traditional methods. In other words, recourse rate shippers should not bear the responsibility of unsubscribed capacity alone and pipelines should continue to market all unsubscribed capacity.

The Commission believes that a pipeline's negotiation of individual rates with shippers should not affect the way a pipeline accounts for the recovery of transition costs. For example, the Commission specified in *Natural Gas Pipeline Company of America*[80] that pipelines treat transition costs as the last item discounted. One of the main purposes of this policy was to ensure that transition costs are spread as evenly as possible among all the pipeline's customers and to reduce the shifting of costs to the pipeline's captive customers. Consistent with this policy, if a pipeline negotiates a rate with a customer that does not include transition costs, the pipeline will be at risk for the collection of those costs and cannot reallocate them to its recourse rate shippers.

Currently, pipelines' maximum tariff rates are subject to a variety of surcharges, in addition to those that relate to transition costs, e.g., ACA, operational Account No. 858, and GRI.[81] The Commission expects that pipelines' recovery and treatment of these costs will not change for shippers under negotiated rate contracts. As is currently the case, pipelines who negotiate to provide services at less than the maximum tariff rate will be subject to the same Commission policies, such as the *Natural* policy on the attribution of discounting. The Commission expects that, to the extent pipelines wish to deviate from these existing policies, they will be willing to accept the risk of underrecovery of these costs.

Because of the number of issues remaining concerning whether negotiation of terms and conditions of service is appropriate, the Commission is not willing to permit the negotiation of individual shipper customized terms of service at this time. Commission willingness to entertain requests for negotiated rates expands on the flexibility in rates already permitted by the Commission with discounting. In allowing further negotiation of rates, the Commission is confident that there are a number of mechanisms to ensure that inappropriate cost shifting does not take place. However, further discussion with the industry of all the ramifications of negotiated terms of service is needed.

Therefore, the Commission is establishing a separate proceeding in which it will consider this issue and is inviting interested participants to file comments on the issues raised above, as well as any other issue that should be considered before permitting pipelines to negotiate terms of service with individual shippers. Participants interested in commenting on these issues should submit their written comments in Docket No. RM96–7–000 within 60 days of the date of this order.

By the Commission.

Lois D. Cashell,

Secretary.

Appendix

Commenters

Alberta Department of Energy (Alberta)
American Gas Association (AGA)
American Forest and Paper Association (AF&PA)
American Public Gas Association (APGA)
Amoco Energy Trading Corporation and Amoco Production Company (Amoco)
ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG)
Associated Gas Distributors (AGD)
Atlanta Gas Light Company and Chattanooga Gas Company (Atlanta Gas Light)
Brooklyn Union Gas Company (Brooklyn Union)
Cascade Natural Gas Corporation, Northwest Natural Gas Company, Washington Natural Gas Company and Washington Water Power Company (Pacific Northwest Commenters)
Cincinnati Gas & Electric Company, Union Light, Heat and Power Company and Lawrenceburg Gas Company (CINergy Gas Companies)
Cities of Lenox, *et al.* (Lenox)
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia)
Columbia Gas Distribution Companies (Columbia Distribution)
Connecticut Natural Gas Corporation (Connecticut Natural)
Consolidated Edison Company of New York, Inc. (Con Edison)
Consolidated Natural Gas Company (CNG)
Cove Point LNG Limited Partnership (Cove Point)
Enron Interstate Pipelines (Enron)
Fertilizer Institute
Florida Public Service Commission (Florida)
Fuel Managers Association (Fuel Managers)
Gas Research Institute (GRI)
Hadson Gas Systems, Inc. (Hadson)
Illinois Commerce Commission (Illinois)
Independent Oil & Gas Association of West Virginia (IOGA)
Independent Petroleum Association of Mountain States (IPAMS)
Indicated Shippers
Industrial Gas Consumers (IGC)
Interstate Natural Gas Association of America (INGAA)
KN Interstate Natural Gas Transmission Company (KN Interstate)
Koch Gateway Pipeline Company (Koch Gateway)
Natural Gas Supply Association (NGSA)
NorAm Gas Transmission Company (NorAm)
Northeast Energy Associates and North Jersey Energy Associates (Energy Associates)
Northern Distributor Group (Northern Distributors)
Northern Illinois Gas Company (NI-Gas)
Northern Indiana Public Service Company (Northern Indiana)
Northwest Industrial Gas Users (NWIGU)
Office of the Ohio Consumers' Counsel (Ohio CC)
Pacific Gas and Electric Company[1]

[80] 69 FERC ¶ 61,029 (1994), *order on reh'g,* 70 FERC ¶ 61,317 (1995).

[81] GRI's funding mechanism for 1996 and 1997 is designed to collect 50 percent of GRI's Commission-approved budget through reservation surcharges and 50 percent through the volumetric surcharge. 71 FERC ¶ 61,130 (1995). Negotiated rates could change the mix of reservation/usage billing units. GRI has expressed concerns that pipelines may not recover full GRI revenue levels or pipelines may leave GRI if market-based or negotiated rates are implemented.

[1] Filed but had no comments.

Pacific Gas Transmission Company (PGT)
Pennsylvania Office of Consumer Advocate (Pa OCA)
Pennsylvania Public Utility Commission (PaPUC)
Petrochemical Energy Group (PEG)
Public Service Commission of the State of New York (New York)
Public Service Electric and Gas Company (PSE&G)
Public Utilities Commission of Ohio (Ohio PUC)
Public Utilities Commission of the State of California [1]
Southern California Edison Company (SoCal Edison)
Southern California Gas Company (SoCalGas)
Tejas Power Corporation (Tejas)
Texaco Natural Gas Inc. (Texaco)
Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Algonquin Gas Transmission Company (PEC Pipeline Group)
Transok, Inc. (Transok)
UGI Utilities, Inc.
United Distribution Companies (UDC)
Williams Interstate Natural Gas System (WINGS)
Williston Basin Interstate Pipeline Company (Williston Basin)
Wisconsin Distributor Group (Wisconsin Distributors)

[FR Doc. 96–2547 Filed 2–6–96; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. TM96–4–32–000]

Colorado Interstate Gas Company; Notice of Out-of-Time Tariff Filing

February 1, 1996.

Take notice that on January 30, 1996, Colorado Interstate Gas Company (CIG) filed Fifteenth Revised Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1, reflecting an increase in the fuel reimbursement percentage for Transportation Fuel Gas from 2.17% to 2.32% effective March 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2560 Filed 2–6–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TQ96–4–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 30, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with a proposed effective date of February 1, 1996.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect an increase of $0.1249 per dt in the Commodity Charge, as measured against ESNG's regularly scheduled Quarterly Purchased Gas Adjustment filing, Docket No. TQ96–3–23–000, et al., filed on January 3, 1996 to be effective February 1, 1996.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the period of February 1, 1996 through April 30, 1996, and has been calculated using its best estimate on available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers/suppliers under ESNG's market-responsive gas supply contracts.

ESNG respectfully requests waiver of the Commission's thirty (30) day notice requirement so as to permit it to place the subject rates into effect on February 1, 1996, as proposed. ESNG is unable to meet the thirty (30) day notice requirements because normal purchasing of gas supplies from producers/suppliers are always negotiated five working days prior to the end of each month (for the next month's supply). The normal time frame to order gas supply for the next month does not give ESNG any flexibility in order to make a filing in time for the ''notice requirement'' when gas prices spike upward (from projected) as they have for the month of February, 1996. The Commission's waiver of the thirty (30) day notice requirement in the case of this instant filing would allow for a more accurate recovery of ESNG's costs and mitigate the deferred commodity costs which would occur in the absence of such waiver.

ESNG states that copies of the file have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2561 Filed 2–6–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM96–3–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 1, 1996

Take notice that on January 29, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of March 1, 1996:

Third Revised Sheet No. 213
Third Revised Sheet No. 214
Third Revised Sheet No. 216
Second Revised Sheet No. 216A
Second Revised Sheet No. 216B
First Revised Sheet No. 216C

National states that the proposed tariff sheets were submitted to flow through upstream pipeline take-or-pay (TOP) charges in accordance with Section 20 of the General Terms and Conditions of National's FERC Gas Tariff and the

orders of the Federal Energy Regulatory Commission in Docket Nos. RP91–47–000, *et al.*[1]

National further states that these tariff sheets set for the allocation method to flow through the principal amounts, plus interest, for TOP charges refunded by Columbia Gas Transmission Corporation (Columbia). National proposes to flow through its share of Columbia's fixed TOP refunds based on National's method at Docket No. RP91–47–000.[2]

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commission's of the State of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2559 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–326–000 and RP95–242–000]

Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

February 1, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, February 7, 1996, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket. If necessary, the conference will continue on Thursday, February 8, 1996.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0917 or John P. Roddy (202) 208–0053.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2551 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–128–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 29, 1996, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, revised tariff sheets, to be effective March 1, 1996.

Natural states that the purpose of the filing is to modify the definition of unauthorized overrun under Rate Schedules ITS and BESS, and make minor house-cleaning changes which more accurately reflect new services.

Natural requests whatever waivers may be necessary to permit the tariff sheets as submitted to become effective March 1, 1996.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules Regulation. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2553 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–130–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 30, 1996, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing establishes the direct bill amounts by shipper resulting from the second payment of the buyout of the Pan Alberta Gas (U.S.) Exchange Agreement that was turned back by Northern's customers and not assigned through the initial Reverse Auction, pursuant to the Reverse Auction Cost Recovery Mechanism established in Northern's Global Settlement. Therefore Northern has filed Fifth Revised Sheet No. 68 to reflect these amounts in its Tariff and will commence billing such amounts effective March 1, 1996.

Northern states that copies of this filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2555 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[1] *National Fuel Gas Supply Corporation,* 67 FERC ¶ 61,137 (1994) (May 4 Order); and *National Fuel Gas Supply Corporation,* 68 FERC ¶ 61,132 (1994).

[2] *Columbia Gas Transmission Corporation,* 67 FERC ¶ 61,054 (1994).

[Docket No. MG96–7–000]

OkTex Pipeline Company; Notice of Filing

February 1, 1996

Take notice that on January 25, 1996, OkTex Pipeline Company (OkTex) filed standards of conduct under Standard I, 18 CFR 161.3(i), Order Nos. 497 *et seq.* [1] and Order Nos. 566 *et seq.* [2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 16, 1996, will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2550 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. RP96–132–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

February 1, 1996.

Take notice that on January 30, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective March 1, 1996:

First Revised Sheet No. 140
Original Sheet No. 140a
First Revised Sheet No. 141
Original Sheet No. 141a

Southern states that the purpose of this filing is to change the monthly cash-out mechanism of its imbalance resolution procedures to provide that shippers who accrue monthly imbalances in the same direction as the net system imbalance for that month will cash out their imbalances based on a high or low price rather than on an index price. There will be no change in the cashout mechanism for shippers who accrue monthly imbalances in the opposite direction of the net system imbalance. Southern has requested that these sheets be made effective as of March 1, 1996.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 96–2557 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–45–000]

Honeoye Storage Corporation; Notice of Electronic Tariff Filing

February 1, 1996.

Take notice that on January 25, 1996, Honeoye Storage Corporation (Honeoye) filed a diskette containing in electronic format its FERC Gas Tariff, First Revised Volume No. 1. The filing was made to comply with FERC Order No. 582 issued September 28, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2549 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–73–002]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 30, 1996, Tennessee Gas Pipeline Company (Tennessee) submitted for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, to be effective on the dates stated thereon:

Substitute Fourth Revised Sheet No. 20
Substitute Fifth Revised Sheet No. 20
Substitute Fourth Revised Sheet No. 23
Substitute Fifth Revised Sheet No. 23
Substitute First Revised Sheet No. 23A
First Revised Original Sheet No. 23B
First Revised Second Substitute Original Sheet No. 30
Substitute First Revised Sheet No. 30
Second Substitute Second Revised Sheet No. 30
Second Substitute Third Revised Sheet No. 30
Second Substitute Fifth Revised Sheet No. 30
Substitute Sixth Revised Sheet No. 30
Substitute Seventh Revised Sheet No. 30
Substitute Eighth Revised Sheet No. 30

Substitute First Revised Substitute Ninth Revised Sheet No. 30

Tennessee states that the purpose of this filing is to comply with the Commission's order issued on December 29, 1995 in Docket Nos. RP96–73–000, *et al., Tennessee Gas Pipeline Co.,* 73 FERC ¶ 61,398.

Tennessee states that the revised tariff sheets produce a TCRA monthly demand surcharge of $0.27 per dth for Rate Schedules FT–A and FT–G and a volumetric surcharge of $0.0148 for Rate Schedule FT–GS. Tennessee states that the revised tariff sheets comply with the foregoing December 29, 1995 order. Tennessee states that the instant filing complies with the Commission's requirement in the December 29, 1995 order that it refile its TCRA tariff sheets to reconcile the balances in the Unrecovered Transportation Costs Account pursuant to Article XXIV of its tariff, along with certain other conditions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2552 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–131–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 30, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of March 1, 1996:

Twelfth Revised Sheet No. 11
Seventh Revised Sheet No. 11A
Sixteenth Revised Sheet No. 12
Fourth Revised Sheet No. 16
Third Revised Sheet No. 17

Texas Gas states that the revised tariff sheets are being filed in compliance with Section 17.3 (n) and (o) of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, and reflects the Cash-Out Revenue Credit Adjustment as required by the referenced section. The filing proposes a commodity rate reduction of $(.0026) applicable to FT and IT Rate Schedules effective March 1, 1996.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2556 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–129–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 30, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendices A and B to the filing, to become effective March 1, 1996. The proposed changes would increase revenues from jurisdictional service by $5.0 million based on the 12–month period ending October 31, 1995, as adjusted.

Trunkline states that the filing is being made in accordance with the provisions of Section 4 of the Natural Gas Act and satisfies the requirements of Article VII of the Stipulation and Agreement (Settlement) dated January 20, 1995, as approved by Commission Orders dated July 6, 1995 and December 15, 1995 in Docket No. RP94–164–006, et al.

Trunkline further states that this filing revises Trunkline's rates and its tariff for jurisdictional services in order to match costs and revenues properly in light of the current and projected cost of operations and changes in the projected demands on and use of the Trunkline system. In addition, Trunkline states that it will confirm the appropriateness of regulatory asset treatment as well as specific rate treatment for the recovery of certain categories of environmental costs and workforce realignment costs.

Trunkline states that copies of the rate filing or summary version thereof are being served on all jurisdictional customers, applicable state commissions and parties that have requested service.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 96–2554 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–43–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 1, 1996.

Take notice that on January 16, 1966, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 1996:

Substitute Eighth Revised Sheet No. 6
Substitute Ninth Revised Sheet No. 6A

WNG states that this filing is being made in compliance with Commission order issued December 29, 1995 in Docket No. TM96–2–43–000. WNG states that it was directed to file revised tariff sheets within 15 days of the order to remove the 1.7 Bcf storage loss increase, or to provide support for

including a portion of such storage loss increase.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in dockets referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2558 Filed 2–6–96; 8:45 am]

BILLING CODE 6717–01–M

Pittsburgh Energy Technology Center

Determination of Noncompetitive Financial Assistance Renewal With Reservoir Engineering Research Institute

AGENCY: U.S. Department of Energy, Bartlesville Project Office. Notice of Non-Competitive Financial Assistance Renewal Award.

SUMMARY: The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(B)(2)(i)(A) it intends to award a Grant through the Pittsburgh Energy Technology Center (PETC) to Reservoir Engineering Research Institute (RERI) for the continuation of it's effort entitled ''Fractured Petroleum Reservoirs''.

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Dona G. Sheehan, Contract Specialist, (412) 892–5918.

SUPPLEMENTARY INFORMATION:

Grant No.
DE–FG22–96BC14850
Title of Research Effort
''Research Consortium on Fractured Petroleum Reservoirs''
Awardee
Reservoir Engineering Research Institute
Term of Assistance Effort
Thirty-six (36) months
Cost of Assistance Effort
The total estimated value is $1,520,000
The DOE share of funding for this program study is $300,000.00

Objective

The objective of this effort is to continue research along the previous line and conduct research in four areas: (1) Miscible displacement in fractured porous media, (2) Critical gas saturation, (3) Immiscible gas-oil gravity drainage in fractured/layered media, and (4) Water injection in fractured porous media. The study based on each of these tasks will include an analytical or experimental phase to be conducted in conjunction with the theoretical research.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (A), the Reservoir Engineering Research Institute has been selected as the grant recipient. (A) The grant is a continuation of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 96–2637 Filed 2–6–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

AC Intertie Project; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–71 and Rate Schedules INT–FT2 and INT–NFT2 placing firm and nonfirm transmission rates into effect on an interim basis. The interim rate, called the provisional rate, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis or until it is replaced by another rate.

The power repayment studies indicate that the proposed rates for firm and nonfirm transmission service are necessary because of adjustments in operation and maintenance expenses and an anticipated decrease in current marketable capacity on the new 500–kV transmission system.

Three major changes are affecting the rates for the AC Intertie: (1) The establishment of separate firm transmission rates for the existing 230/345–kV lines and the new 500–kV lines as a result of customer comments and concerns expressed in formal and informal meetings with Western; (2) changing the methodology of calculating interest offsets to be consistent with the other power marketing administrations; and (3) adjustments Western made to budgeted investments for the AC Intertie Project.

DATES: Rate Schedules INT–FT2 and INT–NFT2 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after February 1, 1996, and will be in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis through September 30, 2000, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P. O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453

Mr. Terry D. Waggoner, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1611

Mr. Joel K. Bladow, Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835). These power rates are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly

section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

Rate Order No. WAPA–71 confirming, approving, and placing the proposed AC Intertie rate adjustments into effect on an interim basis, is issued, and the new Rate Schedules INT–FT2 and INT–NFT2 will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, DC. January 30, 1996.

Charles B. Curtis,

Deputy Secretary.

In the matter of: Western Area Power Administration Rate Adjustment for Pacific Northwest-Pacific Southwest Intertie Project, Rate Order No. WAPA–71.

Order Confirming, Approving, and Placing the Pacific Northwest-Pacific Southwest Intertie Firm and Nonfirm Transmission Service Rates Into Effect on an Interim Basis

February 1, 1996.

These power rates are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a) through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published on November 10, 1993 (58 FR 59176), the Secretary delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

AC Intertie: Pacific Northwest-Pacific Southwest Intertie Project
Additions: A unit of property constructed or acquired which enhances or improves a project system.
CIAR: Compound Interest Amortization Repayment
CEP: Cost Evaluation Period, which is the first 5 future years in the PRS, normally consistent with the budget period.
CROD: Contract rate of delivery
Current PRS: The PRS used in this rate order, which was used to test the adequacy of the existing rate.
Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order.
DC: Direct Current
DOE: Department of Energy
DOE Act: Department of Energy Organization Act, August 4, 1977 (42 U.S.C. 7101 *et seq.*)
DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.
EIS: Environmental Impact Statement
Engineering Ten Year: A planning document prepared
Construction and Replacement Plan: By Western for transmission system construction for a 10-year period. Also referred to as the ''Engineering 10-Year Plan.''
FERC: Federal Energy Regulatory Commission
FY: Fiscal Year
IDC: Interest During Construction
kW: Kilowatt
$/kW/year: Annual charge for capacity usage—(§ per kilowatt per year)
kWh: Kilowatthour
mills/kWh: Mills per kilowatthour
Multiproject Costs: These are costs for facilities being charged to one project that benefit other projects
MW: Megawatt
NEPA: National Environmental Policy Act of 1969. (42 U.S.C. 4321 *et seq.*)
O&M: Operations and maintenance
pinch-point: The future FY with the largest annual revenue requirement
PMA: Power marketing administration
PRS: Power repayment study
Proposed rate: A rate revision that the Administrator of Western recommends to the Deputy Secretary of Energy for approval
Provisional rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary
Ratesetting PRS: The PRS that utilizes, in whole or part, proposed or assumed rates. It is designed to demonstrate that potential revenue levels will satisfy the cost recovery criteria over the remainder of the power system's repayment period
Reclamation: Bureau of Reclamation, U.S. Department of the Interior
Replacement: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project
Replacement study: The cyclical analysis of replacement service lives
Secretary: Secretary of Energy
Treasury: Secretary of the Department of the Treasury
Western: Western Area Power Administration, DOE
WSPP: Western Systems Power Pool

Effective Date

The AC Intertie rates for firm and nonfirm transmission service will become effective on an interim basis beginning on February 1, 1996, and will be in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis through September 30, 2000, or until superseded. Western is implementing a rate for the AC Intertie 230/345-kV transmission lines that is separate from the rate for the 500-kV transmission lines for firm transmission service, but a combined rate for nonfirm transmission service.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of the firm transmission service and nonfirm transmission service rates. The provisional firm transmission rate for the existing 230/345-kV transmission system in FY 1996 represents a rate increase of 85 percent over the existing step 1 rate, and for the period FY 1997 through FY 2000, it represents a 48 percent increase over the existing step 1 rate. The provisional nonfirm transmission service rate for the existing system represents an increase of 100 percent from the current nonfirm transmission service rate. The provisional firm transmission rate for the 500-kV transmission system is $17.98/kW/year for FYs 1996 through 1998 and $17.23/kW/year for FYs 1999 through 2000. This rate is classified as a major rate adjustment as defined at 10 CFR §§ 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to

determine the public procedures for the rate adjustment. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. The first informal public information meeting was held on February 22, 1995. Western explained the need for the proposed rate adjustments and answered questions from those attending.

2. A Federal Register notice was published on May 17, 1995 (60 FR 26433), which extended the existing rates for firm and nonfirm transmission service that became effective August 1, 1993, until October 1, 1996.

3. The second informal public information meeting was held on July 6, 1995. Western representatives again explained the need for the proposed rate adjustment, provided copies of studies, and answered questions from those attending.

4. A Federal Register notice was published on July 31, 1995 (60 FR 38955), officially announcing the proposed rate adjustment for firm transmission service and nonfirm transmission service rates, initiating the public consultation and comment period, announcing the August 24, 1995, public information forum and the September 18, 1995, public comment forum, and presenting procedures for public participation.

5. A letter was mailed to all AC Intertie customers and other interested parties on August 7, 1995, providing a copy of the AC Intertie Proposed Rate Adjustment Brochure and announcing the public information forum and public comment forum.

6. At the public information forum held on August 24, 1995, Western explained the need for the rate increase in greater detail and answered questions.

7. A letter was mailed to all AC Intertie customers and other interested parties on September 13, 1995, providing a copy of the issue papers concerning the abandoned plant audit adjustment.

8. The comment forum was held on September 18, 1995, to give the public an opportunity to comment for the record. Four persons representing customers and customer groups made oral comments.

9. A letter was mailed to all AC Intertie customers and interested parties on October 14, 1995, providing a copy of the answers to the questions that were raised during the comment period. The letter also announced an informal meeting on October 25, 1995, to answer any questions on the CIAR methodology.

10. A question and answer informal meeting was held on October 25, 1995, to discuss the compound interest amortization methodology. Questions and comments were also raised at this meeting. These comments have also been incorporated and taken into consideration in the final rate settings studies.

11. A Federal Register notice published on November 22, 1995 (60 FR 57867), extended the comment period until November 27, 1995.

12. Ten letters were received during the 119-day consultation and comment period ending November 27, 1995. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The AC Intertie was authorized as part of a much larger alternating current (AC) and direct current (DC) combined transmission system (Pacific Intertie Project) by section 8 of the Act of August 31, 1964, 16 U.S.C. 837g. The basic purpose of the Pacific Intertie Project was to provide, through power transmission system interconnections, maximum utilization of the total power resources to meet the nation's growing demands. This purpose was to be accomplished through: (1) The exchange of summer-winter surplus peaking capacity between the Northwest and Southwest to reduce capital expenditures for new generating capacity; (2) the sale of Northwest secondary energy to the Southwest; (3) the sale of Southwest energy to the Northwest to ''firm'' peaking hydroelectric sources during critical water years; (4) conservation of significant amounts of fuel through the use of surplus hydroelectric energy; and (5) increased efficiency in the operation of hydroelectric and thermal resources. As authorized, the Pacific Intertie Project was to be a cooperative construction venture by Federal and non-Federal entities that incorporated the capability for both AC and DC transmission components and that provided an intertie among certain Federal and non-Federal power systems.

The Lower Colorado Region (LCR), Bureau of Reclamation, U.S. Department of the Interior, (Reclamation) was assigned construction jurisdiction for: (1) the Celilo-Mead 750-kV DC transmission line from the Oregon-Nevada border to Mead Substation; (2) Mead Substation; and, (3) all facilities south of Mead Substation. Several delays in congressional construction funding for the DC line revised its estimated in-service date to the point that some of the potential users withdrew their interest. This, and the subsequent lack of congressional funding, resulted in the May 1969 indefinite postponement of the DC line construction. Consequently, the facilities constructed provide only AC transmission service.

Pursuant to section 302 of the DOE Organization Act, 42 U.S.C. 7152(a), dated August 4, 1977, these Reclamation constructed facilities were transferred to Western. Only those AC Intertie facilities which are administered by Western's Desert Southwest Customer Service Region and which provide AC transmission service are the subject of this rate adjustment. To simplify identification, these facilities have been classified as the AC Intertie and are sometimes referred to as the existing system.

On February 1, 1996, Western will add to the AC Intertie the new Mead-Phoenix and Mead-Adelanto 500-kV transmission lines. The additional sales of capacity are expected to be 668 MW. A separate marketing plan is being developed for the sales of the additional capacity.

Power Repayment Studies

PRSs are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12.b, states:

> In addition to the recovery of the above costs (operations and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus (5) other costs such as payments to basin funds, participating projects, or States.

Existing and Provisional Rates

The following table compares the existing transmission service rates and the proposed transmission service rates.

COMPARISON OF THE EXISTING AND PROVISIONAL RATES

Type of service	Existing rate 230/345–kV system extended through 10/1/1996	Existing rates step two 230/345/500–kV system 10/1/1996 through 7/31/1998	Proposed rate 230/345–kV system 2/1/1996 through 9/30/2000	Proposed rate 500–kV system 2/1/1996 through 9/30/2000
Firm transmission service ..	$4.46/kW/year	$8.01/kW/year	1996 [1]—$8.26/kW/year, 1997–2000—$6.58/kW/year.	1996–1998—$17.98/kW/year, 1999–2000—$17.23/kW/year
Nonfirm transmission rate (mills/kWh).	1.00 mills/kWh	1.52 mills/kWh	2.00 mills/kWh	2.00 mills/kWh

[1] Rate based upon 8 months.

Certification of Rates

Western's Administrator has certified that the AC Intertie firm and nonfirm transmission service rates placed in effect on an interim basis herein are the lowest possible, consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

The power repayment study for the 230/345–kV transmission system indicates that the proposed rate adjustments for firm and nonfirm transmission service are necessary due to adjustments in operation and maintenance expenses of the existing system, and due to capacity in the new 500–kV transmission system being sold separately. The existing rates were designed to recover all annual costs and investment repayment of both the existing 230/345–kV transmission lines and the new 500–kV transmission lines. Three major changes are affecting the rates for the AC Intertie.

The first change is the establishment of separate firm transmission rates for the existing 230/345–kV transmission lines and the new 500–kV transmission lines. This change responds to customer comments and concerns during formal and informal meetings Western held with its customers. Separate PRSs has been prepared for the 500–kV portion and the 230/345–kV portion of the AC Intertie.

The second change is the determination of interest offsets. An interest offset is a credit that is made toward interest expenses. Western is changing its methodology of calculating interest offsets to be consistent with the other power marketing administrations. The old method calculates interest offsets on only the principal that was repaid in the current year. The new method calculates interest offsets on both the principal and interest for the current year.

The third change is adjustments Western made to data budgeted for investments to the AC Intertie Project. Western's staff determined the total O&M costs on the combined system for the AC Intertie Project and developed a percentage breakdown based upon O&M costs, to determine a method for allocating Other Revenues/Costs.

Existing System

Based upon FY 1994 data, the PRS for the AC Intertie showed that the existing Step II of the firm transmission service rate of $8.01/kW/year and the nonfirm transmission service rate of 1.52 mills/kWh would provide more than sufficient revenues to pay the project costs within the prescribed time periods. The ratesetting PRS indicates that a transmission service rate for February 1, 1996, through September 30, 1996, of $8.26/kW/year and a transmission service rate of $6.58 for October 1, 1996, through September 30, 2000, for firm transmission service is adequate to meet revenue requirements. The rate for FY 1996 is higher because the revenue will be collected over an 8 month period rather than over a 12 month period. The nonfirm rate was determined by developing a combined rate for both systems. The provisional nonfirm transmission rate of 2.00 mills/kWh for nonfirm transmission service is required to meet revenue requirements for FY 1996 through the end of the study.

New System

Based upon FY 1994 data, the PRS for the new Mead-Phoenix and Mead-Adelanto 500–kV transmission system showed that a rate of $17.98/kW/year for February 1, 1996, through September 30, 1998, and a transmission service rate of $17.23/kW/year for October 1, 1998, through September 30, 2000, would satisfy the repayment criteria. The nonfirm rate was determined by developing a combined rate for both systems. The proposed rate for nonfirm transmission service of 2.00 mills/kWh will meet revenue requirements for FY 1996 through the end of the study.

The provisional rates filed with FERC have been updated from the rate originally proposed in the customer brochure and Federal Register notice dated July 31, 1995.

The changes to the PRS are as follows:

1. Revised budget data for the 230/345–kV existing system.

2. Revised power repayment studies that include the new interest offset methodology.

3. Revised budget data for the 500–kV system.

4. Increase in other revenue sales based upon proposed transmission rate.

Firm Transmission Revenue Requirements

A comparison of the transmission revenue requirements estimated for the step II of the existing rate for 1996 to the proposed revenue requirements for the existing 230/345–kV AC Intertie system and to the proposed revenue requirements for the new 500–kV system based upon the pinch-point methodology is as follows:

Step II of the existing system transmission revenue requirements	Proposed revenue requirements for the 230/345–kV system	Proposed revenue requirements for the new 500–kV system
$24,883,655	$8,709,909	$12,352,554

The rate adjustment is necessary to satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2.

Replacement and Addition Activities

The decrease from the existing Step II 230/345–kV transmission system rate is largely due to a decrease in replacements and additions and a decrease in the O&M costs for the existing system. The AC Intertie initial investment will not be fully paid until FY 2028. The capitalized costs for future replacements and additions in the cost evaluation period includes IDC. The IDC calculation for each replacement is determined by the interest rate in the year construction begins. The annual interest expense for replacements and additions is also based on the interest rate in the year construction begins. The

total replacement cost for the cost evaluation period through the end of the study is $42,891,147.

The 500–kV transmission system has been pulled out of the existing 230/345–kV transmission power repayment study. A 500–kV transmission system power repayment study has been developed to determine the transmission rate for the new system. The new transmission system will provide better service to the customers and additional transmission paths that are presently not available. The total cost of the 500–kV Mead-Phoenix and Mead-Adelanto transmission line for the cost evaluation period through the end of the study is $134,103,799 and is to be repaid by 2046.

Abandoned Plant

Western's auditors have identified approximately $14.5 million in equipment and interest charges that are contained in the financial statements as abandoned plant that Western has not included in the rate base. Western's financial statements show that these charges have accumulated since 1964 for the construction of the Direct Current (DC) portion of the Intertie Project.

The construction of the DC line was discontinued in 1969 by the Assistant Secretary of the Department of the Interior. At the time of the decision, the total expenditure amounted to approximately $10.5 million. Since that time the amount has increased to approximately $14.5 million. This amount includes $2,399,747 of IDC and approximately $952,574 of tangible assets and studies. The remaining $11.1 million represents the remaining charges for which no tangible assets/studies exist. These costs are not in the PRS, because they were expended on a feature that was never placed in service.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data for the 5-year proposed rate approval period for the existing 230/345–kV system.

AC Intertie Project—5-Year Rate Study Summary Period Revenues and Expenses

Revenue and expenses	Existing rate step II 230/345/500-kV system 10/1/96 through 9/30/2000	Proposed rates 230/245-kV system 2/1/96 through 9/30/2000	Difference
Revenues:			
Firm Transmission	105,009,620	35,545,000	70,464,620
Other Revenues	19,503,775	8,906,743	10,597,032
Total Revenues	124,513,395	43,451,743	81,061,652
Revenue Distribution:			
Operations & Maintenance	17,486,459	12,643,540	4,842,919
Other Deductions	1,077,007	1,640,012	(563,005)
Interest on Deferred	0	490,316	(490,316)
Annual Cost:			
Interest	93,042,899	23,102,897	69,940,002
Investment Repayment	12,814,649	1,984,977	10,829,672
Capitalized Expenses	92,381	3,590,002	(3,497,621)
Study-Year Adjustments	0	0	0
Total	124,513,395	43,451,744	81,061,651

The following table provides a summary of revenue and expense data for the 5-year proposed rate approval period for the new 500–kV system.

AC Intertie Project.—5-Year Rate Study Summary Period Revenues and Expenses

Revenue and expenses	Existing rate step II 230/345/500–kV system 10/1/96 through 9/30/2000	Proposed rates 500–kV system 2/1/96 through 9/30/2000	Difference
Revenues:			
Firm Transmission	105,009,620	59,051,200	45,958,420
Other Revenues	19,503,775	1,807,372	17,696,403
Total Revenues	124,513,395	60,858,572	63,654,823
Revenue Distribution:			
Operations & Maintenance	17,486,459	3,569,559	13,916,900
Other Deductions	1,077,007	487,620	589,387
Interest on Deferred	0	0	0
Annual Cost:			
Interest	93,042,899	52,707,044	40,335,855
Investment Repayment	12,814,649	4,094,349	8,720,300
Capitalized Expenses	92,381	0	92,381
Study-Year Adjustments	0	0	0
Total	124,513,395	60,858,572	63,654,823

The table provides a summary of revenue and expense data for the 5-year proposed rate approval period for the combined system.

AC INTERTIE PROJECT.—5-YEAR RATE STUDY SUMMARY PERIOD REVENUES AND EXPENSES

Revenue and expenses	Existing rate step II 230/345/500–kV system 10/1/96 through 9/30/2000	Proposed combined rate study 2/1/96 through 9/30/2000	Difference
Revenues:			
Firm Transmission	105,009,620	90,195,000	14,814,620
Other Revenues	19,503,775	10,714,115	8,789,660
Total Revenues	124,513,395	100,909,115	23,604,280
Revenue Distribution:			
Operations & Maintenance	17,486,459	16,213,099	1,273,360
Other Deductions	1,077,007	2,127,632	(1,050,625)
Interest on Deferred	0	286,491	(286,491)
Annual Cost:			
Interest	93,042,899	71,141,078	21,901,821
Investment Repayment	12,814,649	7,458,773	5,355,876
Capitalized Expenses	92,381	3,682,042	(3,589,661)
Study-Year Adjustments	0	0	0
Total	124,513,395	100,909,115	23,604,280

Basis for Rate Development

The provisional rates were designed to meet cost recovery criteria. The power repayment studies indicate that the proposed rates for firm and nonfirm transmission service are necessary because of the redistribution of costs from the current rate setting study. The current rate setting study anticipated 1,718 MW of capacity available for sale. The existing rates were designed to recover all annual costs and investment repayment of both the existing 230/345–kV transmission lines and the new 500–kV transmission lines. Three major changes are affecting the rates for the AC Intertie.

The first change is the establishment of separate firm transmission rates for the existing 230/345–kV transmission lines and the new 500–kV transmission lines. This change is due to customer comments and concerns during the informal and formal meetings Western held with its customers. Separate PRSs have been prepared for the 500–kV portion and the 230/345–kV portion of the AC Intertie.

The second change is the determination of interest offsets. An interest offset is a credit that is made toward interest expenses. Western is changing its methodology of calculating interest offsets to be consistent with the other power marketing administrations. The old method calculates interest offsets on only the principal that was repaid in the current year. The new method calculates interest offsets on both the principal and interest for the current year.

The third change is adjustments Western made to data budgeted for investments to the AC Intertie Project. Western's staff determined the total O&M costs on the combined system for the AC Intertie Project and developed a percentage breakdown based upon O&M costs, to determine a method for allocating Other Revenues/Costs.

Existing 230/345-kV Transmission System

Operations and Maintenance expenses have decreased for the 230/345–kV system, since the O&M expenses for the 500–kV transmission system are in a separate power repayment study as well as the additional facilities. The 230/345–kV system is projecting 1,050 MW of capacity for sale.

500–kV Transmission System

There is also a anticipated decrease in current marketable capacity on the new 500–kV system. This is now projected to be 668 MW which is 156 MW decrease from the current rate setting study. Once the 500–kV transmission lines are energized and go into service, these 500–kV transmission lines will become an integral part of the AC Intertie.

Nonfirm Transmission Service

Western decided to maintain one nonfirm transmission service rate for the AC Intertie Project. This maintains consistency with other Western projects and allows for the ability to market nonfirm transmission service through the WSPP Agreement and Joint Transmission Agreement which Western is a participant. The single nonfirm transmission rate has been derived by calculating a firm rate from a combined transmission line power repayment study. Once the yearly kW rate is determined, it is divided by 8760 hours in a year and multiplied by a 60 percent load factor. This number is then converted to mills/kWh.

Comments

During the 119 day comment period, Western received 10 written comments. In addition, five persons commented during the September 18, 1995, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Irrigation & Electrical Districts Association of Arizona (Arizona)
K. R. Saline & Associates (Arizona)
Arizona Power Authority (Arizona)
Central Arizona Water Conservation District (Arizona)
Salt River Project (Arizona)

Representatives of the following organizations made oral comments:

Irrigation and Electrical Districts Association of Arizona (Arizona)
K. R. Saline & Associates (Arizona)
Arizona Power Authority (Arizona)
Central Arizona Water Conservation District (Arizona)
Salt River Project (Arizona)

Most of the comments received at the public meetings and in correspondence

were related to the issue on abandoned plant, the separation of the new 500–kV transmission system from the existing system, and the change in the ratesetting methodology from the pinch-point methodology to the CIAR method. All comments were considered in developing the provisional rates.

Comment: The customers support the idea of moving away from the pinch-point methodology to the compound interest amortization repayment method as was done in the Parker-Davis Project.

Response: Western developed power repayment studies based upon the CIAR method and the pinch-point method. After review of these studies with the customers through working groups, the customers request is to remain with the traditional pinch-point methodology. This rate submittal in based upon the pinch-point methodology.

Comment: The rate brochure includes approximately $13,558,108 in replacements associated with Mead Substation Stage 05. Would Western please provide a breakdown of the proposed work including the rationale to allocate all of these proposed expenditures to the 230/345–kV transmission system project versus the 500–kV transmission system project?

Response: The Intertie Project Proposed Rate Adjustment Brochure refers to replacements at Mead Substation (see page 15) which are part of a multifaceted construction project, Mead Stage 05. The portion of the work related to Intertie expenses is described below (excerpt from the Congressional Budget document Facility Data Sheet):

Activity 2: The work to be performed is as follows:

At Mead: This portion of the project consists of replacing 18 power circuit breakers at Mead Substation, provide new wiring and associated control cabinets, and new line relaying to protect the lines. *Four of the 18 breakers to be replaced are a result of the planned addition of a 500–kV AC transmission line from Liberty Substation to Mead Substation to McCullough Substation, where it will tie into a 500–kV line into the Los Angeles area. The associated costs will be recovered from the Mead-Phoenix 500–kV Project.* Add an additional fault recorder to assist in determining causes of system failures. Provide two vehicle crossing in the switchyard to improve access to equipment necessary for maintenance of the breakers. Replace the bolted bus connections with compression fittings to reduce thermal hot spots. Replace a portion of the station service power distribution system to provide 120VAC convenience power at the breakers. *At Liberty Substation:* Replace the line relaying and control cabinet.

The objective is to replace the breakers at Mead that are associated with the Intertie facilities. These circuit breakers will be under rated due to increased fault current. The fault current has increased due to the interconnected power system growth in the area.

The southern Division of the Pacific Northwest-Pacific Southwest Intertie Transmission System (Intertie) is part of the Pacific Northwest-Pacific Southwest Intertie authorized August 31, 1964, by Public Law 88–552. The Intertie consists of a 345–kV AC transmission line from Mead Substation, near Hoover Dam and Boulder City, Nevada, to Liberty Substation near Phoenix, Arizona, and a 230–kV line from Liberty Substation to Pinnacle Substation north of Phoenix. The Intertie facilities are interconnected with additional AC Intertie transmission facilities which are owned and operated by various Federal and non-Federal entities.

In the first paragraph of the description, in the bold and underlined portion, it states that: *''Four of the 18 breakers to be replaced are a result of the planned addition of a 500–kV AC transmission line from Liberty Substation to Mead Substation to McCullough Substation, where it will tie into a 500–kV line into the Los Angeles area. The associated costs will be recovered from the Mead-Phoenix 500–kV Project.''* This statement should clarify that the portion of the Intertie expense that is the result of the 500-kV Project has been accounted for and properly funded. The accounting process for the proper expending has been done by accounting adjustments through the use of Journal Vouchers in our financial management system.

Comment: When Western decided to split the Intertie into two separate projects (230/345–kV and 500–kV) how has Western allocated the interconnection facilities between Mead Substation and Market Place Substation? The tie between the two substations was not required for the operation of the existing 345–kV project and therefore should be allocated to the 500–kV project. At a minimum Western needs to identify the offsetting benefits to the existing Intertie customers of these additions.

Response: The tie between Mead Substation and Marketplace Substation is 13 miles of 500–kV transmission line. The cost to build, operate and maintain these facilities is being allocated to the 500–kV transmission system.

Comment: It is our understanding that there is approximately 67 MW (Phoenix to Mead) of excess capacity available of the existing Intertie (345-kV line). Since Western has indicated they believe that they will be successful in marketing 668 MW on the 500–kV project. It seems appropriate that 67 MW of those sales would in reality be contract over the 345–kV line. Would Western provide its rational for not including marketing the additional 67 MW on the 345–kV line before projecting sales on the more expensive 500–kV line.

Response: The referenced 67 MW of transmission system capacity was the estimated amount of capacity that was not under firm contractual arrangements for the existing system. This was stated at the August 18, 1995, public information forum. The existing system for the AC Intertie has a total marketable transmission system capability of 1,050,000 kilowatts.

Western currently has 987,643 kW of the 230/345–kV transmission system capacity under firm contracts.

Comment: Included in Western's FY 1995 10–Year Plan is approximately $5,016,000 to replace the 345–kV Series Capacitor Control and Bypass System. Has the installation of the 500–kV transmission line caused or contributed to the need to replace the series capacitor controls? Given the fact that the 500–kV transmission line may have excess capacity for some time, is there potential to delay this expenditure until additional transfer capability is needed? What is the rate impact of the proposed replacement of the capacitor controls?

Response: The series capacitor banks at Mead and Liberty substations were installed in July 1977. The PCB capacitor units were replaced in 1992 with new non-PCB units. The pneumatic control system is deteriorating and preliminary review indicates it should be replaced with an electronic and optical control system.

The installation of the 500–kV line did not cause or contribute to the deteriorating of the pneumatic control system. The series capacitors were not included in the cost base of the power repayment study because the projected in-service date went beyond the cost evaluation period for power repayment consideration. Although the costs were not included, a separate study has been run to determine the effect on the rate. The existing system rate would increase about $.23/kW-year.

Comment: Would Western provide its rational for allocating Other Revenues/ Costs on miles of transmission?

Response: Western's staff used the following rationale to distribute projected Other Deductions and Other Revenues for the AC Intertie Project to the two systems as follows:

In the early studies, Western determined the total miles of the AC Intertie Project and developed a percentage breakdown by transmission miles. The existing system (230/345–kV transmission lines) consists of 271 miles of transmission lines or 37 percent of the combined system. The new system (500–kV transmission lines) consists of 458 miles of transmission lines or 63 percent of the combined system.

Based upon customer request and comment, Western changed its methodology and based the other deductions and other revenues upon the total O&M in the combined power repayment study. Western's staff determined the total O&M costs on the combined system for the AC Intertie Project and developed a percentage breakdown based upon O&M costs, to determine a method for allocating Other Revenues/Costs to each of the separate systems. The allocation of other costs and other revenues obtained through the Multiproject Cost calculations, has been applied by the above methodology.

Comment: Would Western provide its rational for a single nonfirm rate? What has been the historical nonfirm uses of the existing 345–kV system? Would Western please provide its projection of nonfirm energy sales on each of the proposed projects (345–kV and 500–kV)?

Response: Due to customer request to develop a single firm transmission service rate for the 230/345–kV and 500–kV transmission lines, Western decided to maintain one nonfirm transmission service rate for the AC Intertie Project. This maintains consistency with other Western projects and allows for the ability to market nonfirm transmission service through the WSPP Agreement and Joint Transmission Agreement of which Western is a participant. The single nonfirm transmission rate has been derived by calculating a firm rate from a combined transmission line power repayment study. Once the yearly kW rate is determined, it is divided by 8760 hours in a year and multiplied by a 60 percent load factor. This number is then converted to mills/kWh.

Typically, Western's non-firm sales on the existing AC Intertie are made through our membership in the WSPP or under our fuel replacement program. For example, in FY 1995, WSPP sales totaled approximately 195 GWh and revenues of approximately $2.3 million; fuel replacement sales totaled approximately 67 GWh and revenues of approximately $670,000.

Projections for non-firm energy sales on the AC Intertie system should remain at the same levels. These sales could be split between the existing and 500-kV AC Intertie systems in the future.

Western determines future year projections for nonfirm transmission sales revenues for the AC Intertie Project by calculating a 3-year average of total nonfirm sales as reflected in the results of operations. Western does not keep a separate log of nonfirm sales by transmission line voltages; therefore information pertaining to separate projections of nonfirm sales on the 230/345–kV and 500–kV transmission lines is unavailable.

Comment: Western's white paper addresses the options to resolve the $11.1 million in abandoned plant that Western has indicated as a cost responsibility of the AC Intertie project. We support Western's option number 4, and hereby request Western seek authority through the budget cycle to declare the abandoned plant as nonreimbursable.

Response: With customer support, Western will seek authority through the Department to declare the $11.1 million of abandoned plant as nonreimbursable.

Comment: Consider the acceptability of directly assigning non-firm transmission revenues, which are based on the historical level of non-firm transmission, to the existing 345/230–kV system. Also, all ''Other Revenues and Expenses'' would be allocated based on an O&M factor versus the presently proposed ''Line Miles'' method.

Response: Western has been directly assigning all nonfirm transmission revenues, which are based on the historical level of nonfirm transmission, to the existing 230/345–kV system. We are estimating future nonfirm transmission revenues for the 500–kV system to be $300,000 per year. Distribution of Other ''Revenue and Expenses'' which is due to Multiproject Cost and Revenues, are based upon O&M factors.

Comment: (1) Investigate what is included in the $2.3 million revenue number stated in Western's October 13th letter. (2) What is the appropriate level of GWH for the Intertie and what would be the corresponding level of revenues?

Response: The $2.3 million of WSPP sales mentioned in the October 13, 1995, letter includes total WSPP nonfirm transactions including energy sales made under WSPP during FY 1995. The transmission portion associated with the AC Intertie is approximately $70,000. The GWH associated with these particular WSPP nonfirm transmission transactions for FY 1995 was approximately 26 GWH.

Comment: Continue the use of the 1,050,000 KW as the Marketable Capacity for the Existing 230/345 System. This issue centers on whether or not Western needs to reserve 50 MW of capacity on the existing system considering the ability to use both the 230/345-kV lines and 500-kV lines for ''operation flexibility.''

Response: The 1,050,000 kW is the estimated transmission capacity which is projected to be marketed, for the purposes of determining the existing 230/345-kV AC Intertie rate adjustment. This estimate is based on projected demand for transmission capacity in the region and on transmission service requests received by Western. Transmission capacity in excess of 1,050,000 kW exists on the 230/345-kV AC Intertie system, but is primarily available from Mead Substation to the Phoenix area and is in limited demand. If transmission capacity in excess of 1,050,000 kW is marketed in the future, future rate adjustments will reflect the addition.

Comment: The information distributed by Western at the August 24, 1995, public information forum contains a page of ''AC Intertie Project Investments'' which are to be assigned to the existing and new systems. All of the investments, except the ''Mead-Phoenix 500-kV transmission line'' and the ''Mead-Adelanto 500-kV transmission line'' have been assigned to the existing 230/345 system. Yet, we know that at least a component of the ''Mead-Substation Stage 05'' investment should be allocated to the 500-kV system, specifically, the costs associated with four (4) of the 18 breakers. What are the costs associated with these four breakers and should any portion of the other investments be assigned to the 500-kV system.

Response: The costs associated with the four breakers which are attributed to the 500-kV system are cost for breaker hardware, installation, sectionalizing breaker, portion of design, portion of switch gear, portion of control boards, and portion of site preparation. The total cost attributed to the 500-kV system is $1,945,071.

Breakdown of theses costs are as follows:

Mead 05 Breaker Hardware	$589,200
Mead 05 Breaker Installation	494,030
Mead 05 Sectionalizing Breaker	103,345
Mead 05 Portion of Design	98,868
Mead 05 Portion of Switchgear	55,000
Mead 05 Portion of CNTRL Boards	79,448
Portion of Mead: CNTRL Bldg., Site Prep	525,181
Total Itemized Cost:	1,945,071

Western believes that all other investments have been properly allocated to the 230/345-kV system and the 500-kV system. We are in the process of closing out work for the 500-kV system and would be willing to provide detailed information on the allocation of equipment. If an adjustment is necessary, Western will work with customers during the next rate adjustment process.

Comments: Repayment of the Capitalized Deficits in FY 96. In accordance with a customer's request, run a new PRS in which the capitalized deficit is repaid in FY 1996, and then a separate PRS for years 1997 forward.

Response: Based upon the request, Western ran a new study forcing the deficits to be paid by 1996, the results, using the Compound Interest Amortization method are: Rates: FY 1995—$4.46, FY 1996—$10.36, FY 1997—$7.21.

Comment: Customer request Western to determine separate nonfirm transmission rates for the existing 230/345-kV transmission system and the new 500-kV transmission line.

Response: The calculated nonfirm transmission service rate for the 230/345-kV transmission lines is 1.40 mills/kWh. The calculated nonfirm transmission service rate for the 500-kV transmission lines is 3.28 mills/kWh.

Comment: We have heard that the Area Manager of the Boulder City Area Office may have written off the abandoned plant dollars in 1983. Does any document exist writing off the abandoned plant?

Response: Western has not been able to locate the document and is not sure that such a document exists. Area Managers do not have the authority to write off a dollar amount of such magnitude. Western will continue to search for the document and check for the legality of the document.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of the environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review at the Desert Southwest Customer Service Region, Western Area Power Administration, Office of the Assistant Regional Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 85009–5313; and Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001.

Submission to Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective February 1, 1996, the Rate Schedules INT-FT2 and INT-NFT2. The rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute rates on a final basis, through September 30, 2000.

Issued in Washington, D.C., January 30, 1996.

Charles B. Curtis

Supersedes Rate Schedule INT-FT1

United States Department of Energy
Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project

Schedule of Rates for Firm Transmission Service

Effective

The first day of the first full billing period beginning on or after February 1, 1996, and will remain in effect through September 30, 2000, or until superseded, whichever occurs first.

Available

In the marketing area served by the Pacific Northwest-Pacific Southwest Intertie Project.

Applicable

To firm transmission service customers where capacity and energy are supplied to the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) system at points of interconnection with other systems and transmitted and delivered, on a bi-directional basis, less losses, to points of delivery on the AC Intertie system specified in the service contract.

Character and Conditions of Service

Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract over the 230/345-kV transmission lines.

Rates 230/345-kv System

Firm Transmission Service Charge: February 1, 1996, through September 30, 1996: $8.26 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract: payable monthly at the rate of $0.688 per kilowatt.

October 1, 1996, through September 30, 2000: $6.58 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract, payable monthly at the rate of $0.548 per kilowatt.

Rates 500-kv System

Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract over the 500-kV transmission lines.

Firm Transmission Service Charge: February 1, 1996, through September 30, 1998: $17.98 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract, payable monthly at the rate of $1.50 per kilowatt.

October 1, 1998, through September 30, 2000: $17.23 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract, payable monthly at the rate of $1.44 per kilowatt

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by

the customer in accordance with the service contract.

Rate Schedule INT-NFT2;Supersedes Rate Schedule INT-NFT1

United States Department of Energy Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project

Schedule of Rates for Nonfirm Transmission Service

Effective

The first day of the first full billing period beginning on or after February 1, 1996, and will remain in effect through September 30, 2000, or until superseded, whichever occurs first.

Available

In the marketing area served by the Pacific Northwest-Pacific Southwest Intertie Project.

Applicable

To nonfirm transmission service customers where capacity and energy are supplied to the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) system at points of interconnection with other systems and transmitted and delivered, on a bi-directional basis, less losses, to points of delivery on the AC Intertie system established by contract.

Character and Conditions of Service

Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Rate

Nonfirm Transmission Service Charge: 2.00 mills per kilowatthour of the scheduled delivered kilowatthours at the point of delivery, established by contract, payable monthly.

Adjustments

For Reactive Power

None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 96–2523 Filed 2–6–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180987; FRL 4994–6]

Bifenthrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Pesticide Regulation (hereafter referred to as the ''Applicant'') for use of the pesticide, bifenthrin (Capture), to control silverleaf whitefly (SWF) on up to 40,000 acres of leaf lettuce and 22,000 acres of broccoli, cauliflower, cabbage and rapini. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180987,'' should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180987]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the bifenthrin, available as Capture 2EC from FMC Corporation, to control silverleaf whitefly on up to 40,000 acres of leaf lettuce and 22,000 acres of broccoli, cauliflower, cabbage and rapini in California. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, California still does not have material that will provide them with satisfactory late season control of the silverleaf whitefly. The registrant (Miles, Inc.) for the registered alternative product imidacloprid (Admire/Provado) does not want growers to use imidacloprid throughout the growing season in order to eliminate any potential that the whitefly may develop a resistant gene to imidacloprid. When used as a combination, Imidacloprid (Admire) and bifenthrin (Capture) allowed the growers to maintain the ability to grow a marketable crop in 1993 and 1994. Without the use of bifenthrin, the growers are forced into a situation in which they must do multiple sprays with less effective materials. The Applicant believes the use of bifenthrin as a foliar spray in combination with imidacloprid at planting will provide excellent control of whiteflies. Without the use of bifenthrin, the Applicant claims that growers will suffer significant economic loss this growing season.

Under the proposed exemption, a maximum of four applications for lettuce and five applications for broccoli, cauliflower, cabbage and rapini would be made at 0.08 to 0.1 lb active ingredient (a.i./A) [(5.2 to 6.4 fl. ozs. of product per acre)] by ground or air equipment. Not to apply within 20 days of harvest. Do not apply by ground equipment within 25 feet or by air within 150 feet of lakes, reservoirs, rivers, permanent streams or natural ponds estuaries and commercial fish farms. A 200-yard buffer for aerial application and 40 yards for ground application shall be observed around aquatic habitats containing endangered species (desert pupfish, and Delhi Sands flower Loving Fly).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24(a)(6). Exemptions for the use of bifenthrin on lettuce have been requested and granted for the past 5 years, and an application for registration of this use has not been submitted to the Agency.

A record has been established for this notice under docket number [OPP–180987] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: January 26, 1996.

Stephen Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–2235 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50813; FRL–4778–4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

100–EUP–99. Renewal. Ciba Plant Protection, P.O. Box 18300, Greensboro, NC 27419-8300. This experimental use permit allows the use of 32.8 pounds of the herbicide 2-[[[[4,6-dimethyl-2-pyrimidinyl)-amino]carbonyl]amino]sulfonyl]benzoic acid, 3-oxetanyl ester on 400 acres of soybeans to evaluate the control of weeds. The program is authorized only in the States of Arkansas, Delaware, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, North Carolina, North Dakota, Ohio, South Dakota, Tennessee, Virginia, and Wisonsin. The experimental use permit is effective from March 23, 1996 to December 31, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 241, CM #2, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov)

50534–EUP–4. Issuance. ISK Biosciences Corporation, 5966 Heisley Rd., P.O. Box 8000, Mentor, Ohio 44061-8000. This experimental use permit allows the use of 660 pounds of the nematicide O-ethyl S-(1-methylpropyl)(2-oxo-3-thiazolidinyl)-phosphonothioate for an applicator exposure study. The purpose of the study is to determine the exposure to mixers, loaders, and applicators to the nematicide under normal working conditions. A total of 110 acres is involved; no crops are involved. The program is authorized only in the State of California. The experimental use permit is effective from August 25, 1995 to August 25, 1996. (Dennis Edwards, PM 19, Rm. 207, CM #2, 703–305–6386, e-mail: edwards.dennis@epamail.epa.gov)

279–EUP–132. Extension. FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 260 pounds of the herbicide ethyl 2-chloro-3-[2-chloro-4-fluoro-5-[4-(difluoromethyl)-4, 5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]propanoate on 4,000 acres of corn, sorghum, soybeans, and wheat to evaluate the control of broadleaf weeds, grasses, and sedges. The program is authorized in the States of Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming. The experimental use permit is effective from February 9, 1996 to February 9, 1997. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne I. Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

707–EUP–132. Extension. Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. This experimental use permit allows the use of 845.0 pounds of the herbicide 3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester on 2,380 acres of citrus and cotton to evaluate the control of weeds (annual grasses and broadleaf weeds). The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, and Texas. This experimental use permit is effective from August 7, 1995 to July 28, 1997. Temporary tolerances for residues of the active ingredient in or on citrus, cotton seed, and cotton forage have been established. (Joanne I. Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 17, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–2621 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180986; FRL 4994–5]

Cymoxanil, Propamocarb Hydrochloride and Dimethomorph; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the New York State Department of Environmental Conservation (hereafter referred to as the ''Applicant'') to use the pesticides cymoxanil (CAS 57966–95–7), propamocarb hydrochloride (CAS 25606–41–1) and dimethomorph (CAS 110488–70–5) to treat potentially up to 30,000 acres of potatoes to control immigrant strains of late blight which are resistant to historically used control materials. The Applicant proposes the use of either new (unregistered) chemicals or the first food use of an active ingredient therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180986,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180986]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of cymoxanil, propamocarb hydrochloride, and/or dimethomorph on potatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Recent failures to control late blight in potatoes as well as tomatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl. The Applicant states that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicant states that each of these requested chemicals has been shown to be effective against these strains of late blight. Each active ingredient holds current registrations throughout many European countries for control of this disease. The Applicant indicates that at least a 40 percent yield reduction is expected based on the current infestation. Net revenues are expected to be reduced by over $27 million for the affected acreage without the use of these requested chemicals.

Specific exemptions for use of one or more of these chemicals on potatoes were issued to 22 states in 1995. An additional request is currently pending, bringing the total potential potato acreage treated under these requests to 885,010. Specific exemption requests for use of one or more of these chemicals on tomatoes have either been authorized or are pending for three states involving 66,500 acres. It is presumed that a similar number of states will be requesting each of these uses for the 1996 season.

The Applicant proposes to apply propamocarb hydrochloride, manufactured by AgrEvo USA

Company, as Tattoo C, at a maximum rate of 0.9 lbs. active ingredient (a.i.) [(2.3 pt of product)] per acre by ground or air, with a maximum of 5 applications per season. A 14-day PHI will be observed. Use under this exemption could potentially amount to a maximum 134,000 lb. of propamocarb hydrochloride.

The Applicant proposes to apply cymoxanil, manufactured by E.I. du Pont de Nemours and Company, as Curzate M-8, at a maximum rate of 0.12 lbs. (a.i.) [(1.5 lb. of product)] per acre, by ground or air, with a maximum of 7 applications per season and a 14-day PHI. Use under this exemption could potentially amount to a maximum 25,200 lb. of cymoxanil.

The Applicant proposes to apply dimethomorph at a maximum rate of 0.2 lbs. (a.i.) [(2.25 lb. of product)] per acre, by ground or air, with a maximum of 5 applications per season and a 14-day PHI. Use under this exemption could potentially amount to a maximum 30,375 lbs of dimethomorph.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) or the first food use of an active ingredient. Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

A record has been established for this notice under docket number [OPP–180986] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the New York State Department of Environmental Conservation.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: January 25, 1996.

Stephen Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–2236 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30396A; FRL–4994–1]

Lakeshore Enterprises; Amendment to Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an amendment to applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 8, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30396A] and the file symbols (69090–R and 69090–E) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30396A]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Julie Fry, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8582; e-mail: fry.julie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of November 1, 1995 (60 FR 55577), which announced that Lakeshore Enterprises, 2804 Benzie Highway, Benzonia, MI 49616, had submitted applications to register the pesticide products Green Screen Bags and Green Screen Powder (EPA File Symbols 69090–R and 69090–E), animal repellants containing the active ingredient meat meal at 99 percent for both products. The applications are being amended to include the ingredient red pepper at 1 percent for both products, active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. These products are used for agricultural, vegetable, ornamentals, turf, tree, vine, and other terrestrial crops. Notice of receipt of

these applications does not imply a decision by the Agency on the applications.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30396A] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 23, 1996.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–1918 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180988; FRL 4994–7]

Norflurazon; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Georgia Department of Agriculture (hereafter referred to as the ''Applicant'') for use of the pesticide, norflurazon, to control grasses on up to 150,000 acres of Bermudagrass in Georgia. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180988,'' should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180988]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the herbicide, norflurazon, available as Zorial Rapid 80 from Sandoz Agro, Inc., to control grasses on up to 150,000 acres of Bermudagrass hay fields in Georgia. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, large crabgrass, goosegrass and broadleaf signalgrass invade exposed soil seedbeds in newly sprigged Bermudagrass strands. These weeds were traditionally controlled with simazine; however, in 1987, CIBA-GEIGY canceled the registration use in hay fields rather than incur reregistration cost. Since that time there had not been a registered herbicide that will provide control of weedy annual grasses in Bermudagrass hay fields. Although 2,4-D (Esteron 99C) is registered for preemergence control in newly sprigged forage Bermudagrass, it has not consistently provided season long control of annual grasses. Without a control, these grasses can severely restrict Bermudagrass growth following vegetation propagation, limit production

and reduce forage value. The applicant will suffer significant economic net loss of 1.224 million dollars on newly sprigged fields and a net loss of 1.883 million dollars on established fields if the request for use of norflurazon on Bermudagrass is not granted.

Under the proposed exemption, a single application of Zorial Rapid 80 will be made at 0.6 lb to 1.9 lbs of product [(0.5 to 1.5 lbs. active ingredient (a.i./A))] per acre from February 15 to July 1, 1996. Do not graze or feed foliage from treated areas to livestock within 60 days after application.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of norflurazon on Bermudagrass have been requested and granted for the past 4 years, and an application for registration of this use has not been submitted to the Agency.

A record has been established for this notice under docket number [OPP–180988] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Georgia Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: January 26, 1996.

Stephen Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–2234 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180989; FRL 4996–7]

Propazine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the New Mexico Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide propazine (CAS 139–40–2) to treat up to 50,000 acres of sorghum to control pigweed. The Applicant proposes the use of a new (unregistered) chemical; additionally, an emergency exemption for this use has been requested for the previous 3 years, and a complete application for registration of this use and a tolerance petition has not been submitted to the Agency. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180989,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic must be identified by the docket number [OPP–180989]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was

formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicant claims that this has left sorghum growers in New Mexico with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. Until 1993–4, the first season an exemption was requested, growers were using existing stocks of propazine. The Applicant states that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. Although the original Registrant of propazine has decided not to support this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicant states that, since growers used existing stocks of propazine between the time of its voluntary cancellation and the availability of propazine under an emergency exemption, yields have not shown a decrease. However, the Applicant claims that significant economic losses will occur without the availability of propazine.

The Applicant proposes to apply propazine at a maximum rate of 1.2 lbs. active ingredient (a.i.) [(2.4 pts. of product)] per acre, by ground or air, with a maximum of one application per crop growing season. Therefore, use under this exemption could potentially amount to a maximum total of 60,000 lbs. of (a.i.) [(15,000 gal. of product)] in New Mexico. This is the third year that New Mexico has applied for this use of propazine on sorghum, and the fourth year that this use has been requested under section 18 of FIFRA. New Mexico was issued an exemption for this use for last growing season.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), or if an emergency exemption for a use has been requested in any 3 previous years, and a complete application for registration of the use and/or a tolerance petition has not been submitted to the Agency. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–180989] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the New Mexico Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: January 30, 1996.

Stephen Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–2623 Filed 2–6–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

January 31, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 8, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. Copies may also be obtained via fax by contacting the Commission's Fax on Demand System. To obtain fax copies call 202–418–0177 from the handset on your fax machine, and enter the document retrieval number indicated below for the collection you wish to request, when prompted.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New collection.

Title: Parts 2 and 90, Second Order on Reconsideration and Seventh Report and Order for the 900 MHz Specialized Mobile Radio (SMR) Service, PR Docket No. 89–553, PP Docket No. 93–253 and GN Docket No. 93–253, FCC 95–395.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit; Small businesses or organizations.

Number of Respondents: 1,020.

Estimated Time Per Response: 1.5-8 hours.

Total Annual Burden: 1,044 hours.

Needs and Uses: The information will be used by the Commission to determine whether the applicant is legally, technically and financially

qualified to be a licensee. Without such information the Commission could not determine whether to issue the licenses to the applicants that provides telecommunications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The information will also be used to ensure the market integrity of the auction.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–2613 Filed 2–6–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

[Notice 1996–4]

Filing Dates for the Maryland Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of Filing Dates for Special Elections.

SUMMARY: Maryland has scheduled special elections on March 5 and April 16, 1996, in the Seventh Congressional District to fill the U.S. House seat being vacated by Congressman Kweisi Mfume.

Committees required to file reports in connection with the Special Primary Election on March 5 should file a 12-day Pre-Primary Report on February 22, 1996. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on April 16, must file a 12-day Pre-Primary Report, a Pre-General Report on April 8, and a Post-General Report on May 16, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Primary and Special General Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-Primary Report on February 22, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through February 14; a Pre-General Report on April 8, with coverage dates from February 15 through March 31; and a Post-General Report on May 16, with coverage dates from April 1 through May 6, 1996.

All principal campaign committees of candidates in the Special Primary Election only and all other political committees not filing monthly which support candidates in the Special Primary Election shall file a 12-day Pre-Primary Report on February 22, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through February 14, and an April Quarterly Report on April 15, with coverage dates from February 15 through March 31, 1996.

All political committees not filing monthly which support candidates in the Special General only shall file a Pre-General Report on April 8, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through March 31, and a Post-General Report on May 16, with coverage dates from April 1 through May 6, 1996.

CALENDAR OF REPORTING DATES FOR MARYLAND SPECIAL ELECTIONS

Report	Close of books [1]	Reg./cert. Mailing date [2]	Filing date
I. For Committees Involved Only in the Special Primary (03/05/96):			
Pre-Primary	02/14/96	02/19/96 [3]	02/22/96
April Quarterly	03/31/96	04/15/96	04/15/96
II. For Committees Involved in the Special Primary (03/05/96) and Special General (04/16/96):			
Pre-Primary	02/14/96	02/19/96 [3]	02/22/96
Pre-General	03/31/96	04/05/96	04/08/96
Post-General	05/06/96	05/16/96	05/16/96
III. For Committees Involved Only in the Special General (04/16/96):			
Pre-General	03/31/96	04/05/96	04/08/96
Post-General	05/06/96	05/16/96	05/16/96

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[3] The mailing date for the Pre-Primary Report is a Federal holiday; nevertheless, the report must be received by the filing date. Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise they must be received by the filing date.

Dated: February 1, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–2532 Filed 2–6–96; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

D & T Freight Forwarders, 118 Sharondale Drive, Dalton, GA 30721, Phyllis D. Smith, Sole Proprietor

Pan Atlantic Carrier Services, Inc., 2150 N.W. 70 Avenue, Miami, FL 33122, Officers: Shona White, Jose Areas, Exec. Vice President

Alaska Air Forwarding, Inc., 4443 S. 134th Place, Tukwila, WA 98168, Officers: William Ferrari, President, Jeffrey Dornes, Vice President

Pee Jay International Shipping Company (Worldwide Freight Forwarders), 777 South R.L. Thornton Freeway #204, Box 3, Dallas, TX 75203, Peter Mozie and Jonathan Daniels, Partnership

American Logistics and Purchasing Services Ltd., 65 Stuyvesant Avenue, Staten Island, NY 10312, Officers: Anthony L. Medaglia, President, Diana Medaglia, Vice President

Dated: February 1, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–2567 Filed 2–6–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Board of Governors of the Federal Reserve System (Board) hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for review of the information collection system described below. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 8, 1996.

ADDRESSES: Comments, which should refer to the OMB control number, should be addressed to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Comments should also be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for review and approval may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to request approval from OMB of the extension, with revision, of the following reports:

1. Report title: Consolidated Reports of Condition and Income.

Agency form number: FFIEC 031, 032, 033, 034.

OMB control number: 7100–0036.

Frequency: Quarterly.

Reporters: State member banks.

Annual reporting hours: 176,392.

Estimated average hours per response: 44.01.

Number of respondents: 1,002.

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 324]. Except for select sensitive items, this information collection is not given confidential treatment.

Abstract: Consolidated Reports of Condition and Income are filed quarterly with the three federal banking agencies (the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency) for their use in monitoring the condition and performance of banks and the industry as a whole. On November 16, 1995, the three agencies jointly published a notice in the Federal Register (60 FR 57618) describing in detail and inviting comment on the proposed changes to this collection of information. All comments received by the agencies in response to that notice, including a change to the proposed revisions that the agencies made in response to those comments, were addressed in supporting statements that were developed to justify the proposed changes. This notice provides the public with the opportunity to obtain, review, and comment on, the Board's supporting statement.

Board of Governors of the Federal Reserve System, February 2, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–2593 Filed 2–6–96; 8:45 am]

BILLING CODE 6210–01–P

CoreStates Financial Corp; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether commencement of the activity can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, CoreStates Securities Corp, Philadelphia, Pennsylvania, in full-service brokerage activities, pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-2562 Filed 2-6-96; 8:45 am]

BILLING CODE 6210-01-F

National Bancshares Corporation of Texas; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 1, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. National Bancshares Corporation of Texas, Laredo, Texas; to acquire 20 percent of the voting shares of Corpus Christi Bancshares, Corpus Christi, Texas, and thereby indirectly acquire Citizen State Bank, Corpus Christi, Texas.

Board of Governors of the Federal Reserve System, February 1, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-2563 Filed 2-6-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 613]

State and Community-based Childhood Lead Poisoning Prevention Program and Surveillance of Blood Lead Levels in Children Notice of Availability of Funds for Fiscal Year 1996

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1996 for new and competing continuation State and community-based childhood lead poisoning prevention programs, and to build Statewide capacity to conduct surveillance of blood lead levels in children.

State and community-based programs must (1) assure that children in communities with demonstrated high-risk for lead poisoning are screened, (2) identify those children with elevated blood lead levels, (3) identify possible sources of lead exposure, (4) monitor medical and environmental management of lead poisoned children, (5) provide information on childhood lead poisoning and its prevention and management to the public, health professionals, and policy- and decision-makers, (6) encourage and support community-based programs directed to the goal of eliminating childhood lead poisoning, and (7) build capacity for conducting surveillance of elevated blood lead (PbB) levels in children.

Surveillance grants are to develop and implement complete surveillance systems for blood lead levels in children to ensure appropriate targeting of interventions and track progress in the elimination of childhood lead poisoning.

Applicants may apply for either a prevention program grant or a surveillance grant, but not both. Applicants from State health agencies applying for prevention program grant funds must address surveillance issues in their application.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (To order a copy of Healthy People 2000, see Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)), 317A, and 317B (42 U.S.C. 247b-1, 247b-3) of the Public Health Service Act, as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Environmental Justice Initiative

Activities conducted under this announcement should be consistent with the Federal Executive Order No. 12898 entitled, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Grantees, to the greatest extent practicable and permitted by law, shall make achieving environmental justice part of its program's mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of lead on minority populations and low-income populations.

Eligible Applicants

Eligible applicants for State childhood lead prevention programs and surveillance programs are State health departments or other State health agencies or departments deemed most appropriate by the State to direct and coordinate the State's childhood lead poisoning prevention program, and agencies or units of local government that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. Also eligible are federally recognized Indian tribal governments.

Applicants for prevention program grants from eligible units of local jurisdiction must elect either to apply directly to CDC as a grantee, or to apply as part of a statewide grant application. Local jurisdictions cannot submit applications simultaneously through both mechanisms.

For Surveillance Funds Only

Eligible applicants are State health departments or other State health agencies or departments deemed most appropriate by the State to direct and coordinate the State's childhood lead poisoning prevention and surveillance program. Eligible applicants must have regulations for reporting of PbB levels by both public and private laboratories or provide assurances that such regulations will be in place within six months of awarding the grant. This program is intended to initiate and build capacity for surveillance of childhood PbB levels. Therefore, any applicant that already has in place a PbB level surveillance activity must demonstrate how these grant funds will be used to enhance, expand or improve the current activity, in order to remain eligible for funding. CDC funds should be added to blood-lead surveillance funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for surveillance of PbB levels.

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided.

Applicants that currently have CDC funded Childhood Lead Poisoning Prevention Grants may submit supplements for the surveillance component. These supplements must meet all the above eligibility requirements and will be evaluated as a part of the surveillance objective review.

Special Consideration

In order to help empower distressed communities—those that are designated as ''Empowerment Zones'' or ''Enterprise Communities'' (EZ/EC) under the Community Empowerment Initiative [Pub. L. 103–66–August 10, 1993], or those that meet the characteristics of those areas—special consideration will be given to qualified applicants for comprehensive program activities in communities that:

1. Are characterized by a high incidence of children with elevated blood lead levels;

2. Have high rates of poverty and other indicators of socio-economic distress, such as high levels of unemployment, and significant incidence of violence, gang activity, and crime; and

3. Provide evidence that their target community has prepared and submitted an EZ/EC application to HHS for a ''comprehensive community-based strategic plan for achieving both human and economic development in an integrated manner.''

Applicants that meet both the program criteria and the EZ/EC criteria outlined above, will be awarded points in the objective review of their application.

Availability of Funds

State and Community-Based Prevention Program Grant Funds

Approximately $8,000,000 will be available in FY 1996 to fund a selected number of new and competing continuation childhood lead poisoning prevention programs. The CDC anticipates that program awards for the first budget year will range from $250,000 to $2,000,000.

Surveillance Grant Funds

Approximately $300,000 will be available in FY 1996 to fund up to four new grants to support the development of PbB surveillance activities. Surveillance awards are expected to range from $60,000 to $75,000, with the average award being approximately $70,000.

The new awards are expected to begin on or about July 1, 1996. New awards are made for 12-month budget periods within project periods not to exceed 3 years. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

These grants are intended to develop, expand, or improve prevention programs in communities with demonstrated high-risk populations, and/or develop statewide capacity for conducting surveillance of elevated blood-lead levels. Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or surveillance activities. Grant funds should be used to increase the level of expenditures from State, local, and other funding sources.

Awards will be made with the expectation that program activities will continue when grant funds are terminated.

Note:

- Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these program activities are appropriately carried out.
- Not more than 10 percent (exclusive of Direct Assistance) of any grant may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

Purpose

Prevention Grant Program

State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities; however, limited resources have made it difficult for agencies to develop and maintain programs for the elimination of this totally preventable disease. The purpose of this grant program is to provide impetus for the development and operation of State and community-based childhood lead poisoning prevention programs in high-risk areas, and build capacity for conducting surveillance of elevated blood-lead levels in children. Grant-supported programs are expected to serve as catalysts and models for the development of non-grant-supported programs and activities in other States and communities. Further, grant-supported programs should create community awareness of the problem (e.g., among community and business leaders, medical community, parents, educators, and property owners). It is expected that State health agencies will play a lead role in the development of community-based childhood lead poisoning prevention programs, including ensuring coordination and integration with maternal and child health programs; State Medicaid Early Periodic Screening Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act.

The prevention grant program will provide financial assistance and support to State and local government agencies to:

1. Establish, expand, or improve services to assure that children in communities with demonstrated high risk for lead poisoning are screened. Screening should focus on (1) making certain children, not currently served by existing health care services, are screened, (2) integrating screening efforts with maternal and child health programs; State Medicaid programs, such as the EPSDT programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act, and (3) guaranteeing that high-

risk children seen by private providers are screened.

2. Intensify case management efforts to ensure that children with lead poisoning receive appropriate and timely follow-up services.

3. Establish, expand, or improve environmental investigations to rapidly identify and reduce sources of lead exposure throughout a community.

4. Plan and develop activities for the primary prevention of childhood lead poisoning in demonstrated high-risk communities that are conducted in collaboration with other government and community-based organizations.

5. Develop and implement efficient information management/data systems compatible with CDC guidelines for monitoring and evaluation.

6. Improve the actions of other appropriate agencies and organizations to facilitate the rapid remediation of identified lead hazards in high-risk communities.

7. Enhance knowledge and skills of program staff through training and other methods.

8. Based upon program findings, provide information on childhood lead poisoning to the public, policy-makers, the academic community, and other interested parties.

9. Develop state-based systems for surveillance of blood lead levels among children, and use surveillance data to assess prevention activities and target resources.

Surveillance Grant Funds

The surveillance component of this announcement is intended to assist State health departments or other appropriate agencies to implement a complete surveillance activity for PbB levels in children. Development of surveillance systems at the local, State and national levels is essential for targeting interventions to high-risk populations and for tracking progress in eliminating childhood lead poisoning.

The childhood blood-lead surveillance program has the following five goals:

1. Increase the number of State health departments with surveillance systems for elevated PbB levels;

2. Build the capacity of State- or territorial-based PbB level surveillance systems;

3. Use data from these systems to conduct national surveillance of elevated PbB levels;

4. Disseminate data on the occurrence of elevated PbB levels to government agencies, researchers, employers, and medical care providers; and

5. Direct intervention efforts to reduce environmental lead exposure.

Program Requirements

Prevention Grant Program

The following are requirements for Childhood Lead Poisoning Prevention Projects:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of the program.

2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of the program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicant's personnel system.

3. A data management component that supports the development, implementation, and maintenance of an automated case management system that provides timely and useful analysis and reporting of program data.

4. A plan to monitor and evaluate all major program activities and services.

5. Demonstrated experience or access to professionals knowledgeable in conducting and evaluating public health programs.

6. Ability to translate program findings to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

7. Provides information that describes why certain communities were selected for program activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or activities for childhood lead poisoning prevention.

8. A comprehensive public and professional information and education outreach plan directed specifically to high-risk populations, health professionals and paraprofessionals and the public. The plan may also address education and outreach activities directed to policy and decision-makers, parents, educators, property owners, community and business leaders, housing authorities and housing and rehabilitation workers, and special interest groups. The plan should be based on a needs assessment which: (a) Determines the feasibility of a health education program; (b) utilizes assessment data interpretations to determine priorities for health education programming; and (c) identifies the appropriate target population for the program.

9. Establishment and maintenance of a system to monitor the notification and follow-up of children who are confirmed with elevated blood lead levels and who are referred to local Public Housing Authorities (PHAs).

10. Effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (e.g., housing authorities, environmental agencies, maternal and child health programs, State Medicaid EPSDT programs; or, community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act, State epidemiology programs, State and local housing rehabilitation offices, schools of public health and medical schools, and environmental interest groups) to appropriately address the needs and requirements of programs (e.g., data management systems to facilitate the follow-up and tabulation of children reported with elevated blood lead levels, training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of networks with other State and local agencies with expertise in childhood lead poisoning prevention programming.

11. Activities, services, and educational materials provided by the program must be culturally sensitive (i.e., programs and services provided in a style and format respectful of cultural norms, values, and traditions which are endorsed by community leaders and accepted by the target population), developmentally appropriate (i.e., information and services provided at a level of comprehension which is consistent with learning skills of individuals to be served), linguistically specific (i.e., information is presented in dialect and terminology consistent with the target population's native language and style of communication), and educationally appropriate.

12. Assurances that income earned by the childhood lead poisoning prevention program is returned to the lead program for use by the program.

13. For awards to State agencies, there must be a demonstrated commitment to provide technical, analytical, and program evaluation assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

14. Special Requirement regarding Medicaid provider-status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1) as amended by Sec. 303 of the ''Preventive Health Amendments of 1992'' (Pub. L. 102–531), applicants AND current grantees must meet the following requirements: For Childhood Lead Poisoning Prevention Program services

which are Medicaid-reimbursable in the applicant's State:

- Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.
- Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers.

An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

15. For State Prevention Programs, a Surveillance component defined as a process which: (1) Systematically collects information over time about children with elevated PbB levels using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; (3) provides timely and useful analysis and reporting of the accumulated data including an estimate of the rate of elevated PbB levels among all children receiving blood tests; and (4) reports data to CDC in the appropriate format.

To achieve these goals, programs must be able to: (1) Provide qualified staff, other resources, and knowledge to implement the provisions of this program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicant's personnel system; (2) revise, refine, and implement, in collaboration with CDC, the methodology for surveillance as proposed in the respective program application; (3) have demonstrated experience or access to professionals knowledgeable in conducting and evaluating public health programs; and (4) have the ability to translate data to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

For Surveillance Grants

The following are requirements for surveillance only grant projects:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of surveillance program activities.

2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of this program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicant's personnel system.

3. Effective, well-defined working relationships with childhood lead poisoning prevention programs within the applicant's State.

4. Revise, refine, and implement, in collaboration with CDC, the methodology for surveillance as proposed in the respective program application.

5. Collaborate with CDC in any interim and/or final evaluation of the surveillance activity.

6. Monitor and evaluate all major program activities and services.

7. Demonstrated experience or access to professionals knowledgeable in conducting and evaluating public health programs.

8. Ability to translate data to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

Evaluation Criteria

The review of applications will be conducted by an objective review committee who will review the quality of the application based on the strength and completeness of the plan submitted. The budget justification will be used to assess how well the technical plan is likely to be carried out using available resources. The maximum ratings score of an application is 100 points.

A. The Factors To Be Considered in the Evaluation of Prevention Program Grant Funds Are

1. *Evidence of the Childhood Lead Poisoning Problem* (35 points).

The applicant's ability to identify populations and communities at high risk, as defined by data from previous screening efforts, environmental data, and/or demographic data. (Population-based data or estimates should be compared to NHANES III data.) Current screening prevalence and case rates should also be discussed.

2. *Technical Approach* (30 points).

The quality of the technical approach in carrying out the proposed activities including:

(a) Goals and Objectives: The extent to which the applicant has included clearly identified goals which are specific, measurable, and relevant to the purpose of this proposal (10 points).

(b) Approach: The extent to which the applicant provides a detailed description of the proposed activities which are likely to achieve each objective for the budget period (10 points).

(c) Timeline: The extent to which the applicant provides a reasonable schedule for implementation of the activities (5 points).

(d) Evaluation: The extent to which evaluation plans address the achievement of each objective (5 points).

3. *Applicant Capability* (10 points).

Capability of the applicant to initiate and carry out proposed program activities successfully within the time frames set forth in the application. Proposed staff skills must match the proposed program of work described. Elements to consider include:

(a) Demonstrated knowledge and experience of the proposed project director or manager and staff in planning and managing large and complex interdisciplinary programs involving public health, environmental management, and housing rehabilitation. The percentage of time the project manager will devote to this project is a significant factor, and must be indicated (5 points).

(b) Written assurances that proposed positions can and will be filled as described in the application (3 points).

(c) Evidence of institutional capacity, demonstrated by the experience and continuing capability of the jurisdiction, to initiate and implement similar environmental and housing projects. The applicant should describe these related efforts and the current capacity of its agency (2 points).

4. *Collaboration* (20 points).

(a) Extent to which the applicant demonstrates that proposed activities are being conducted in conjunction with, or through, organizations with known and established ties in the target communities. Evidence of support and participation from appropriate community-based or neighborhood-based organizations in the form of memoranda of understanding or other agreements of collaboration. (10 points)

(b) Extent to which the applicant documents established collaboration with appropriate governmental agencies responding to childhood lead poisoning prevention issues such as environmental health, housing, medical management, etc., through specific commitments for consultation, employment, or other activities, as evidenced by the names and proposed roles of these participants and letters of commitment. Absence of letters describing specific participation will result in a reduced rating under this factor. (10 points)

5. *Special Consideration for EZ/EC* (5 points).

Special consideration will be given to applicants that target program activities in communities that:

(a) Are characterized by a high incidence of children with elevated blood lead levels;

(b) Have high rates of poverty and other indicators of socio-economic distress, such as those with high levels of unemployment, and significant incidence of violence, gang activity, and crime; and

(c) Are preparing or implementing a comprehensive community-based strategic plan for achieving both human and economic development in an integrated manner.

6. *Budget Justification and Adequacy of Facilities (Not Scored)* The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

B. The Factors To Be Considered in the Evaluation of Applications for Surveillance Program Grant Funds Only Are

1. *Surveillance Activity:* (35 points).

The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate. The following points will be specifically evaluated:

a. How laboratories report PbB levels.

b. How data will be collected and managed.

c. How will quality data and completeness of reporting will be assured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated.

f. Protocols for follow-up of individuals with elevated PbB levels.

g. Provisions to obtain denominator data.

2. *Progress Toward Complete Blood-Lead Surveillance* (30 points).

The extent to which the proposed activities are likely to result in substantial progress towards establishing a complete State-based PbB surveillance activity (as defined in the ''Purpose'' section).

3. *Project Sustainability* (20 points).

The extent to which the proposed activities are likely to result in the long-term maintenance of a complete State-based PbB surveillance system. In particular, specific activities that will be undertaken by the State during the project period to ensure that the surveillance program continues after completion of the project period.

4. *Personnel* (10 points).

The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal.

5. *Use of Existing Resources* (5 points).

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

6. *Budget* (Not Scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If the SPOCs or tribal governments have any State process or tribal process recommendations on applications submitted to CDC, they should send them to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Other Requirements

Paperwork Reduction Act

Data collection initiated under this grant has been approved by the Office of Management and Budget under number 0920–0282, ''Childhood Lead Prevention Grant Reporting,'' Expiration date October 1996.

Application Submission and Deadline

The original and two copies of the PHS 5161–1 (OMB Number 0937–0189) must be submitted to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305 on or before April 12, 1996.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 .

The announcement is also available through the CDC homepage on the Internet. The address for the CDC homepage is [http://www.cdc.gov]. CDC

will not send application kits by facsimile or express mail.

Please refer to Announcement Number 613 when requesting information and submitting an application.

Technical assistance on prevention activities may be obtained from David L. Forney, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (770) 488–7330.

Technical assistance on surveillance activities may be obtained from Carol Pertowski, M.D., Medical Epidemiologist, Surveillance and Programs Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (770) 488–7330.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017- 001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 31, 1996.

Joseph R. Carter

Acting Associate Director for Management and Operations,

Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–2587 Filed 2–6–96; 8:45 am]

BILLING CODE 4163–18–P

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 9 a.m.–5 p.m., February 29, 1996; 9 a.m.–12 noon, March 1, 1996.

Place: Holiday Inn—Savannah—Midtown, 7100 Abercorn Street, Savannah, Georgia 31406, telephone 912/352–7100, FAX 912/355–6408.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: This subcommittee will listen to presentations from the Radiological Assessments Corporation, Medical University of South Carolina Cancer Registry, as well as updates on the Savannah River Site Phase II Dose Reconstruction Project findings and implications. Additional agenda items will include: the National Center for Environmental Health (NCEH) activities, the National Institute for Occupational Safety and Health and ATSDR presentations on the progress of current studies, and issues regarding the Committee selection process.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Budford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: January 31, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 96–2591 Filed 2–6–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0020]

Animal Drug Export; RALGRO® (Zeranol)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mallinckrodt Veterinary, Inc., has filed an application requesting approval for export of the animal drug RALGRO® (zeranol) implant for cattle to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Mallinckrodt Veterinary, Inc., 421 East Hawley St., Mundelein, IL 60060, has filed application number 0082 requesting approval for export of the animal drug RALGRO® (zeranol)

implant to Canada. The product is intended for implanting in the ear of cattle for increased rate of weight gain and improved feed conversion of weaned beef calves, growing beef cattle, feedlot steers, and feedlot heifers, and increased rate of weight gain in suckling beef calves. The application was received and filed in the Center for Veterinary Medicine on December 7, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 20, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: January 26, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–2596 Filed 2–6–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. February 27, 28, and 29, 1996, 8 a.m., Bethesda Marriott Hotel, Grand Ballroom, 5151 Pooks Hill Rd., Bethesda, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–897–9400 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, February 27, 1996, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; open public hearing, February 28, 1996, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 6 p.m.; open public hearing, February 29, 1996, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 6 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 20, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 27, 1996, the committee will discuss and vote on a premarket approval application (PMA) for a bone filling device for periodontal use. On February 28, 1996, the committee will: (1) Discuss and vote on a PMA for a dental laser for hard tissue use, and (2) discuss the reliability and accuracy of digital subtraction radiography and its use in the clinical design of trials evaluating treatment and/or progression of periodontitis. On February 29, 1996, the committee, with representation from the Dental Drug Products Plaque Subcommittee, will discuss public health issues relevant to a new drug application (NDA) 20–231, a triclosan/fluoride dentifrice, sponsored by Colgate-Palmolive, for use in the prevention of caries, plaque, and gingivitis.

Closed committee deliberations. On February 27, 1996, FDA staff will present to the committee trade secret and/or confidential commercial information regarding dental device issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 31, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–2597 Filed 2–6–96; 8:45 am]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration

Notice of Rescheduled Meeting Dates

Pursuant to Public Law 92–463, notice is hereby given of the rescheduled meetings of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council and Advisory Committee for Women's Services in February 1996.

The meeting of SAMHSA National Advisory Council will include discussions concerning SAMHSA's Reauthorization; SAMHSA's Managed Care Initiative, including the role of SAMHSA in developing mental health and substance abuse standards for managed care facilities; a report on the National Co-Morbidity Survey; a report on the National Conference on Co-Occurring Disorders; and a presentation on the Methodologies and Estimates of Incidence and Prevalence of Seriously Mentally Ill (SMI) Adults. In addition, the staff of an exemplary community-based program will describe their efforts to treat addictive disorders. Attendance by the public will be limited to space available.

The committee will also review, discuss and evaluate contract proposals. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

Meeting Date: February 26, 1996.

Place: Omni-Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Open: February 26, 1996, 9:00 a.m. to 5:30 p.m.

Closed: February 26, 1996, 5:45 p.m. to 7:00 p.m.

Contact: Toian Vaughn, Room 12C–15, Parklawn Building, Telephone: (301) 443–4640 and FAX: (301) 443–1450.

The meeting of the Advisory Committee for Women's Services will include a discussion of and update on policy and program issues relating to women's substance and abuse and mental health service needs at

SAMHSA, including the SAMHSA fiscal year 1996 budget and reauthorization; regional meetings on SAMHSA's proposed Performance Partnership Grants; the Female Adolescent Campaign sponsored by the Center for Substance Abuse Prevention (CSAP); activities of the National Women's Resource Center for the Prevention and Treatment of Alcohol, Tobacco and Other Drug Abuse and Mental Illness; monitoring the impact of change at HHS; and a discussion of data collection pertaining to women.

A summary of the meeting and/or a roster of Committee members may be obtained from: Pamela J. McDonnell, Executive Secretary, Advisory Committee for Women's Services, Office of Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Commitee Name: Advisory Committee for Women's Services.

Meeting Dates: February 27–28, 1996.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

*Open:*February 27: 8:30 a.m. to 5 p.m.; February 28: 8:30 a.m. to adjournment.

Contact: Pamela J. McDonnell, Room 13–99, Parklawn Building; Telephone: (301) 443–5184.

Dated: January 31, 1996.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental, Health Services Administration.

[FR Doc. 96–2594 Filed 2–6–96; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF INTERIOR

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0044), Washington, D.C. 20503.

Title: State Water Research Institute Program, 30 CFR 401.

Abstract: Respondents supply information on eligibility for Federal grants to support water-related research and provide performance reports on accomplishments achieved through use of such funds. This information allows the agency to determine compliance with the objectives and criteria of the grant program.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: State water research institutes.

Annual Responses: 108.

Annual Burden Hours: 9072

Bureau Clearance Officer: John Cordyack (703) 648–7313.

Dated: January 4, 1996.

Robert M. Hirsch,

Chief Hydrologist.

[FR Doc. 96–2529 Filed 2–6–96; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Lower Snake River District Resource Advisory Council; Meeting

AGENCY: Lower Snake River District, Bureau of Land Management.

ACTION: Notice of meeting changes.

SUMMARY: The Lower Snake River District Resource Advisory Council has rescheduled two meetings to discuss and develop draft statewide standards for rangeland health and guidelines for managing livestock grazing on public lands. Public comment periods will be held at 9:00 a.m. on February 17 and at 9:00 a.m. on February 24.

DATES: February 17, 1996, beginning at 9:00 a.m.; and February 24, 1996, beginning at 9:00 a.m.

ADDRESSES: The meetings will be held at the Idaho State Office of the Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Jerry L. Kidd

District Manager

[FR Doc. 96–2520 Filed 2–6–96; 8:45 am]

BILLING CODE 1020–GG–P

[WY–923–1430–01; WYW 132452]

Opening of National Forest System Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 4822.36 acres of National Forest System lands which were included in an application for exchange in the Medicine Bow National Forest.

EFFECTIVE DATE: February 7, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on February 7, 1996, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 132452:

Sixth Principal Meridian

Medicine Bow National Forest

T. 40 N., R. 67 W.,
  Sec. 6, lots 4 and 5, N½SE¼.
T. 40 N., R. 68 W.,
  Sec. 1, lots 1 to 4, inclusive, S½N½, N½S½, SE¼SE¼;
  Sec. 2, lots 1 to 4, inclusive, S½N½, SW¼, N½SE¼;
  Sec. 3, lots 1 and 4, SE¼NE¼, SW¼NW¼, W½SW¼, E½SE¼;
  Sec. 10, SE¼NE¼, NE¼SW¼, NE¼NE¼;
  Sec. 11, NE¼NE¼, SW¼NW¼, NW¼NW¼;
  Sec. 12, SE¼SW¼;
  Sec. 14, NE¼SE¼;
  Sec. 15, S½SE¼.
T. 39 N., R. 69 W.,
  Sec. 3, lots 1 to 3, inclusive, S½N½, N½S½, S½SW¼, SW¼SE¼;
  Sec. 4, S½NE¼, S½;
  Sec. 20, E½NE¼.
T. 40 N., R. 69 W.,
  Sec. 3, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
  Sec. 10, SE¼SW¼, S½SE¼;
  Sec. 11, W½SW¼;
  Sec. 14, S½SE¼;
  Sec. 15, S½N½, S½;
  Sec. 22, N½N½;
  Sec. 23, S½NW¼, N½SW¼, SE¼SE¼;
  Sec. 32, N½SW¼, SW¼SE¼;
  Sec. 34, SE¼SW¼.
T. 39 N., R. 70 W.,
  Sec. 2, lots 1 and 2, S½NE¼

The area described contains 4822.36 acres in Converse County.

At 9 a.m. on February 7, 1996, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid

existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Robert A. Bennett,

Acting State Director.

[FR Doc. 96–2590 Filed 2–6–96; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Reclamation

American River Water Resources Investigation, Central Valley, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability on the draft environmental impact statement/ draft environmental impact report DES 96 05.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Sacramento Metropolitan Water Authority (SMWA) as lead agencies have prepared a joint draft environmental impact statement/draft environmental impact report (DEIS/ DEIR) for the American River Water Resources Investigation (ARWRI). The proposed alternatives provide a means of action through which the water needs of the five county area (El Dorado, Placer, Sacramento, San Joaquin, and Sutter) are met. The proposed alternatives exercise the provisions of several federal laws as applicable to Reclamation. Public hearings will be held in four sessions to receive written or verbal comments on the DEIS/DEIR from interested organizations and individuals on the environmental impacts of the proposal. Notice of the hearings will appear at a future date.

DATES: A 90-day public review period commences with the publication of this notice. Written comments on the DEIS/ DEIR are to be submitted to the Project Manager, Bureau of Reclamation. Public hearings on the DEIS/DEIR will be held during the month of April in Sacramento, Stockton, Placerville, and Auburn.

ADDRESSES: Written comments on the DEIS/DEIR should be addressed to Alan R. Candlish, Project Manager, Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom CA 95630; telephone: (916) 989–7255. The document is available on Internet at http://www.mp.usbr.gov. If requesting copies of the DEIS/DEIR, contact Mr. David M. Haisten, Activity Manager, MP–700, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825–1898, telephone: (916) 979–2338.

Copies of the DEIS/DEIR are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW, Washington DC 20240; telephone: (202) 208–4662
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 236–6963
- Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 979–2338
- Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom CA 95630; telephone: (916) 989–7255
- El Dorado Irrigation District, 2890 Mosquito Road, Placerville, CA 95667; telephone: (916) 622–4513
- El Dorado County Water Agency, 330 Fair Lane, Building A, Placerville, CA 95667; telephone: 621–5392
- Georgetown Divide Public Utility District, 6425 Main, Georgetown, CA 95634; telephone: (916) 333–4356
- El Dorado County Planning Office, 2850 Fairlane Court, Placerville, CA 95667; telephone: (916) 621–5355
- Placer County Water Agency, 144 Ferguson Road, Auburn, CA 95603; telephone: (916) 889–7591
- California Department of Water Resources, Central District, 3251 S Street, Sacramento, CA 94816–7017; telephone: (916) 445–5631
- Sacramento City-County Office of Metropolitan Water Planning, County Office, 5770 Freeport Boulevard, Suite 200, Sacramento, CA 95822; telephone: (916) 433–6276
- Sacramento Metropolitan Water Authority, 5620 Birdcage Street, Suite 180, Citrus Heights, CA 95610–7632; (Office may not be open all hours, please call for hours: (916) 967–7692)
- San Joaquin County Department of Public Works, Flood Control Center, 1810 E. Hazelton Ave., Stockton, CA 95205; (209) 468–3000

Libraries: Copies will also be available for inspections at the following public libraries:

- El Dorado County Library, Main Branch, 345 Fair Lane, Placerville, CA 95667
- Auburn-Placer County Library, 350 Nevada Street, Auburn, CA 95603
- Roseville Public Library, Main Library, 225 Taylor Street, Roseville, CA 95678
- Folsom Library, 300 Persifer Street, Folsom, CA 95630
- Sacramento Public Library, Central Branch, 828 I Street, Sacramento, CA 95814
- Sacramento County Library, 380 Civic Drive, Galt, CA 95632
- Stockton Public Library, Main Branch, 605 N. El Dorado Street, Stockton, CA 95202
- Lodi Public Library, 201 W. Locust Street, Lodi, CA 95240
- Manteca Public Library, 320 W. Center Street, Manteca, CA 95336
- Marysville-Yuba County Library, 303 Second, Marysville, CA 95901

FOR FURTHER INFORMATION CONTACT: If requesting copies of the DEIS/DEIR, contact Mr. David M. Haisten, Activity Manager, MP–700, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825–1898, telephone: (916) 979–2338. For additional information contact Mr. Alan R. Candlish, Study Manager, CC–102, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630, telephone: (916) 989–7255; or Mr. Gene Robinson, Sacramento Metropolitan Water Authority, 5620 Birdcage Street, Suite 180, Citrus Heights, CA 95610–7632, telephone: (916) 967–7692; or Mr. David M. Haisten, Activity Manager, MP–700, Bureau of Reclamation, 2800 Cottage Way, Sacramento CA 95825–1898, telephone: (916) 979–2338.

Dated: January 22, 1996.

Jeffrey S. McCracken,

Acting Regional Director.

[FR Doc. 96–2531 Filed 2–6–96; 8:45 am]

BILLING CODE 4310–94–P

Final Environmental Impact Statement for Proposed Acreage Limitation and Water Conservation Rules and Regulations

February 2, 1996.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability on the final environmental impact statement; INT–FES–96–7.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, and in response to a September 1993 contract for settlement of a lawsuit filed by the Natural Resources Defense Council, National Wildlife Federation, California Natural Resources Federation, California Association of Family Farmers, California Action Network, League of Rural Voters, Inc., and County of Trinity, California (hereinafter NRDC et al.); the Bureau of Reclamation (Reclamation) has prepared a final environmental impact statement (FEIS) on proposed acreage limitation and water conservation rules and regulations for implementing the Reclamation Reform Act of 1982 (RRA), as amended, throughout the 17 Western States.

The purpose of the FEIS is to evaluate potential impacts associated with alternatives for implementing rules under the RRA. As such, the FEIS presents an evaluation of six alternatives, including no action.

DATES: February 7, 1996.

ADDRESSES: Requests for copies should be addressed to: Public Involvement Group, D–8280, Bureau of Reclamation, PO Box 25007, Denver CO 80225; telephone: (303) 236–2722 extension 322.

Copies are available for inspection at all Reclamation Regional and Area offices at the following locations as of the date of this Federal Register notice:

- Office of the Commissioner, Bureau of Reclamation, Room 7612, 1849 C Street, NW, Washington DC 20240
- Reclamation Service Center, Bureau of Reclamation, Library, Room 167, Building 67, Denver Federal Center, Denver CO 80225
- Pacific Northwest Regional Office, Bureau of Reclamation, Room 214, 1150 North Curtis Road, Boise ID 83706
  - Snake River Area Office, Bureau of Reclamation, 214 Broadway Avenue, Boise ID 83702
  - Upper Columbia Area Office, Bureau of Reclamation, 1917 Marsh Road, Yakima WA 98901
  - Lower Columbia Area Office, Bureau of Reclamation, 1503 NE 78th Street, Suite 15, Vancouver WA 98665
  - Snake River Area Office—East, Bureau of Reclamation, 1359 Hansen Avenue, Burley ID 83318
- Mid-Pacific Regional Office, Bureau of Reclamation, Library, Room W–1522, 2800 Cottage Way, Sacramento CA 95825
  - North-Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom CA 95630
  - South-Central California Area Office, Bureau of Reclamation, 2666 North Grove Industrial Drive, Suite 106, Fresno CA 93727
  - Northern California Area Office, Bureau of Reclamation, 16345 Shasta Dam Boulevard, Shasta Lake CA 96019
  - Klamath Basin Area Office, Bureau of Reclamation, 6600 Washburn Way, Klamath Falls OR 97603
  - Lahontan Basin Area Office, Bureau of Reclamation, 705 North Plaza Street, Carson City NV 89701
- Lower Colorado Regional Office, Bureau of Reclamation, Library, Room M117, Nevada Highway and Park Street, Boulder City NV 89005
  - Phoenix Area Office, Bureau of Reclamation, 23636 North 7th Street, Phoenix AZ 85024
  - Lower Colorado Dams Facilities Office, Bureau of Reclamation, Highway 93, Hoover Dam, Boulder City NV 89005
  - Southern California Area Office, Bureau of Reclamation, 27710 Jefferson Avenue, Suite 201, Temecula CA 92590
  - Grand Canyon Area Office, Bureau of Reclamation, 3 miles south of Buchanan, Boulder City NV 89006
  - Yuma Area Office, Bureau of Reclamation, 7301 Calle Agua Salada, Yuma AZ 85364
- Upper Colorado Regional Office, Bureau of Reclamation, Library, Room 7101, 125 South State Street, Salt Lake City UT 84138
  - Albuquerque Area Office, Bureau of Reclamation, 505 Marquette NW, Suite 1313, Albuquerque NM 87102
  - Western Colorado Area Office, Bureau of Reclamation, 2764 Compass Drive, Grand Junction CO 81506
  - Provo Area Office, Bureau of Reclamation, 302 East 1860 South, Provo UT 84606
- Great Plains Regional Office, Bureau of Reclamation, Library, Room 2037, Federal Office Building, 316 North 26th Street, Billings MT 59101
  - Dakotas Area Office, Bureau of Reclamation, 304 East Broadway Avenue, Bismarck ND 58501
  - Eastern Colorado Area Office, Bureau of Reclamation, 11056 West County Road 18E, Loveland CO 80537
  - Montana Area Office, Bureau of Reclamation, 2900 Fourth Avenue North, Billings MT 59101
  - Nebraska-Kansas Area Office, Bureau of Reclamation, Federal Building, 203 West 2nd Street, Grand Island NE 68801
  - Oklahoma-Texas Area Office, Bureau of Reclamation, 420 West Main Street, Suite 630, Oklahoma City OK 73102
  - Wyoming Area Office, Bureau of Reclamation, 705 Pendell Boulevard, Mills WY 82644

Copies will also be available for public inspection at the following libraries:

- Arizona
  - Arizona Department of Water Resources Library, Phoenix
  - Arizona State Library, Department of Library, Archives and Public Records, Phoenix
  - Arizona State Regional Library for the Blind and Physically Handicapped, Phoenix
  - Arizona State University, Noble Science and Engineering Library, Tempe
  - Arizona State University, Hayden Library, Tempe
  - Flagstaff City-Coconino County Public Library, Flagstaff
  - Maricopa County Library, Phoenix
  - Mesa Public Library, Mesa
  - Northern Arizona University, Cline Library, Flagstaff
  - Phoenix Public Library, Phoenix
  - Scottsdale Public Library, Scottsdale
  - Tempe Public Library, Tempe
  - Tucson Pima Library, Tucson
  - University of Arizona Library, Tucson
  - Yuma County Library District, Yuma
- California
  - Bay Area Library and Information System, Oakland
  - California State Library, Sacramento
  - California State University, Hayward Library, Hayward
  - California State University, University Library, Los Angeles
  - California State University Library, Sacramento
  - Colorado River Board of California Library, Glendale
  - Environmental Protection Agency, Region IX Library, San Francisco
  - Fresno County Free Library, Fresno
  - Fresno State University Library, Fresno
  - Kern County Library, Bakersfield
  - Los Angeles Public Library, Los Angeles
  - Los Angeles Public Library, Water and Power Section, Los Angeles
  - Sacramento Public Library, Sacramento
  - San Francisco Public Library, San Francisco
  - Stanford University Libraries, Stanford
  - University of California Water Resources Center Library, Berkeley
  - University of California, General

Library, Berkeley
- University of California, University Research Library, Los Angeles
- University of California, Shields Library, Davis
- University of Southern California, Doheny Memorial Library, Los Angeles

- Colorado
  - Colorado State University Libraries, Fort Collins
  - Denver Central Library, Denver
  - University of Colorado at Boulder, Norlin Library, Boulder
  - University of Denver, Penrose Library, Denver
  - U.S. Air Force Academy, Academy Library, Colorado Springs
  - Grand Junction Public Library, Grand Junction Idaho
  - University of Idaho Library, Moscow
  - Ada Community Library, Boise
  - Idaho State Library, Boise
  - Pocatello Public Library, Pocatello
- Kansas
- University of Kansas, Lawrence
  - Kansas State Library, Topeka
  - Topeka and Shawnee County Public Library, Topeka
- Montana
  - University of Montana, Maurene and Mike Mansfield Library, Missoula

  Billings Gazette Library, Billings
  Parmly Billings Library, Billings
  Missoula Public Library, Missoula
- Nebraska

  University of Nebraska, D.L. Love Memorial Library, Lincoln
  Lincoln City Library, Lincoln
  North Platte Public Library, North Platte
  Omaha Public Library, Omaha
- Nevada

  Boulder City Library, Boulder City
  Carson City Library, Carson City
  Clark County Library District, Las Vegas
  Nevada State Library, Carson City
  University of Nevada, Reno Library, Reno
  University of Nevada at Las Vegas, James Dickinson Library, Las Vegas
  Washoe County Library, Reno
- New Mexico

  Albuquerque Public Library, Albuquerque
  New Mexico State Library, Santa Fe
  New Mexico State Library, Las Cruces
  University of New Mexico, Albuquerque
- North Dakota

  Bismarck Public Library, Bismarck
  Fargo Public Library, Fargo
  North Dakota State University, Fargo
  Minot Public Library, Minot
- Oklahoma

  Metropolitan Library System in Oklahoma County Area, Oklahoma City
  Oklahoma Department of Libraries, Oklahoma City
  Oklahoma State University, Edmon Low Library, Stillwater
  University of Oklahoma, University Libraries, Norman
- Oregon

  Oregon Institute of Technology, Klamath Falls
  Portland State University, Millar Library, Portland
  University of Oregon Library, Eugene
- South Dakota

  Rapid City Public Library, Rapid City
  Sioux Falls Public Library, Sioux Falls
  South Dakota State Library, Pierre
- Texas

  Amarillo Public Library, Amarillo
  Dallas Public Library, Dallas
  El Paso Public Library, El Paso
  Harris County Public Library, Houston
  Texas State Library, Austin
  Texas Technical University Library, Lubbock
- Utah

  Brigham Young University, Harold B. Lee Library, Provo
  Cedar City Public Library, Cedar City
  Salt Lake City Public Library, Salt Lake City
  Salt Lake County Library System, Salt Lake City
  Southern Utah State University Library, Cedar City
  University of Utah, Marriott Library, Salt Lake City
  Utah State University, Merrill Library, Logan
  Utah State Library, Salt Lake City
  Washington County Library, St. George
  Weber State University, Stewart Library, Ogden
- Washington

  King County Library System, Seattle
  Seattle Public Library, Seattle
  Spokane Public Library, Spokane
  University of Washington Libraries, Allen Library, Seattle
  Washington State Library, Olympia
  Yakima Valley Regional Library, Yakima
- Wyoming

  Laramie County Library System, Cheyenne
  Rock Springs Public Library, Rock Springs
  University of Wyoming, Coe Library, Laramie
  Western Wyoming Community College, Rock Springs
  Wyoming State Library, Cheyenne
- Other States

  District of Columbia Public Library, Washington DC
  Library of Congress, Washington DC
  Library Program Service, Government Printing Office, Washington DC
  New York State Library, Albany, New York
  New York Public Library, New York, New York
  Research Libraries, New York, New York

Copies of the FEIS will also be distributed to everyone on Reclamation's current mailing list for this FEIS, which includes anyone who received a copy of the DEIS, anyone who submitted comments on the DEIS, and those who specifically expressed an interest in being added to the mailing list for this FEIS. The appendix containing public comments and Reclamation's responses to those comments will be distributed only to those who submitted comments on the DEIS.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Schuster (D–5300), Westwide Settlement Manager, Bureau of Reclamation, Denver Office, PO Box 25007, Denver CO 80225; telephone: (303) 236–9336 ext 237.

SUPPLEMENTARY INFORMATION: In recognition of organizational, economic, and technological changes in western irrigated farming that have occurred since the Reclamation Act of 1902, the Reclamation Reform Act of 1982 (RRA), Title II, Public Law 97–293 (96 Stat. 1263), was signed into law on October 12, 1982. The RRA revised the number of acres upon which a landowner could receive Reclamation irrigation water. RRA provisions established how much land upon which a landowner could receive Reclamation irrigation water, established reporting requirements, set specific criteria for the price at which an individual or legal entity could receive Reclamation water, and established a requirement for districts to prepare water conservation plans. Amendments to the RRA were included in the Omnibus Budget Reconciliation Act of December 22, 1987 (Reconciliation Act), Title V, Public Law 100–203 (101 Stat. 1330).

Rules and regulations for implementing the RRA, initially becoming effective on January 5, 1984, were amended in 1987, 1988, 1991, and 1995. Environmental assessments and associated supplements were prepared in 1983, 1987, and 1988 that resulted in ''Findings of No Significant Impact'' from implementation of the proposed rules and regulations.

The proposed rules and regulations and the draft environmental impact statement (DEIS) were prepared in response to a September 1993 contract

between the Natural Resources Defense Council, the Department of Justice, and the Department of the Interior for the settlement of a lawsuit challenging the inadequacy of the environmental documentation prepared for the 1987 and 1988 amendments to the RRA rules and regulations. Reclamation agreed to propose new regulations as part of a new rulemaking proceeding that comprehensively reexamines implementation of the RRA, and prepare an EIS considering the impacts of the proposed regulations and alternatives. The FEIS represents a modification of the DEIS based upon public comments.

Six alternatives—including no action and preferred—are presented in the FEIS. They encompass varying levels of regulation to implement the RRA on a westwide basis. This is an EIS in which existing information was used in conjunction with the development of specific assumptions to estimate a range of potential environmental impacts resulting from specific rule changes. While the significance of these impacts on a westwide basis is small, localized impacts could be significant for some alternatives.

Dated: February 2, 1996.

Stephen V. Magnussen,

Acting Commissioner.

[FR Doc. 96–2629 Filed 2–6–96; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–731 (Final)]

Bicycles From China

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION: On November 9, 1995, the Commission instituted the subject investigation and established a schedule for its conduct (60 FR 65667, December 20, 1995). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from March 29, 1996, to April 22, 1996. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 15, 1996; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 18, 1996; the prehearing staff report will be placed in the nonpublic record on April 11, 1996; the deadline for filing prehearing briefs is April 18, 1996; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 24, 1996; the deadline for filing posthearing briefs is April 30, 1996; the Commission will make its final release of information on May 20, 1996; and final party comments are due on May 23, 1996.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: February 1, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–2579 Filed 2–6–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–732 and 733 (Final)]

Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION: On November 28, 1995, the Commission instituted the subject investigations and established a schedule for their conduct (61 FR 1402, January 19, 1996). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from April 15, 1996, to May 6, 1996. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 26, 1996; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May l, 1996; the prehearing staff report will be placed in the nonpublic record on April 25, 1996; the deadline for filing prehearing briefs is May 2, 1996; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 8, 1996; the deadline for filing posthearing briefs is May 14, 1996; the Commission will make its final release of information on June 4, 1996; and final party comments are due on June 7, 1996.

For further information concerning these investigations see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: January 30, 1995

Donna R. Koehnke,

Secretary.

[FR Doc. 96–2576 Filed 2–6–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–365–366 (Final) and 731–TA–734–735 (Final)]

Certain Pasta From Italy and Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations and scheduling of the ongoing countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping Investigations Nos. 731–TA–734–735 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Italy and Turkey of certain pasta,[1] provided for in subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States. The Commission also gives notice of the schedule to be followed in these antidumping investigations and the ongoing countervailing duty investigations regarding imports of certain pasta from Italy and Turkey (Invs. Nos. 701–TA–365–366 (Final)), which the Commission instituted effective October 17, 1995 (60 FR 58638, November 28, 1995). The schedules for the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 17, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain pasta from Italy and Turkey are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The Commission instituted the subject countervailing duty investigations effective October 17, 1995 (60 FR 58638, November 28, 1995). The antidumping and countervailing duty investigations were requested in a petition filed on May 12, 1995, by Borden, Inc., Columbus, OH; Hershey Foods Corp., Hershey, PA; and Gooch Foods, Inc. (Archer Daniels Midland Co.), Lincoln, NE.

Participation in the Investigations and Public Service List

Any person having already filed an entry of appearance in the countervailing duty investigations is considered a party in the antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than 21 days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on May 22, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 5, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 28, 1996. A nonparty who has testimony that may aid the Commission's 4 deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 31, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is May 30, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 11, 1996; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 11, 1996. On July 2, 1996, the Commission will make available to parties all information on which they have not had opportunity to comment. Parties may submit final comments on this

[1] ''Certain pasta,'' the imported product subject to these investigations, consists of non-egg dry pasta in packages of 5 pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to 2 percent egg white. Certain pasta is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions. Excluded from the definition of certain pasta are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to 2 percent egg white.

information on or before July 5, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: January 31, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–2577 Filed 2–6–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Qualification and Certification Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA), is soliciting comments concerning the proposed extension of the information collection related to the ''Qualification and Certification Program.'' A copy of the proposed information collection request can be obtained by contacting the employee listed below in the Addressee section of this notice.

DATES: Written comments must be submitted on or before April 8, 1996. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Patricia W. Silvey, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203. For further information, contact Ms. Silvey at 703–235–1910 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Persons performing tasks and certain required examinations at coal mines which are related to miner safety and health, and which require specialized experience, are required to be either ''certified'' or ''qualified'' to carry out these duties. The regulations recognize State certification and qualification programs. However, where state programs are not available, under the Mine Act and MSHA standards, the Secretary may certify and qualify persons for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor.

Applications for Secretarial certification must be submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. Forms 5000–4 and 5000–7 provide the coal mining industry with a standardized reporting format which expedites the certification process while ensuring compliance with the regulations. The information provided on the forms enables the Secretary of Labor's delegate—MSHA, Qualification and Certification Unit—to determine if the applicants satisfy the requirements to obtain the certification or qualification. Persons must meet certain minimum experience requirements depending on the type of certification or qualification applied for.

II. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to miner safety and health at coal mines.

Type of Review: Reinstatement (without change).

Agency: Mine Safety and Health Administration.

Title: Qualification and Certification Program.

OMB Number: 1219–0069.

Agency Number: MSHA Forms 5000–4 and 5000–7.

Affected Public: Businesses of other for-profit.

Citations: 30 CFR 75.10, 75.155, 77.100 and 77.105.

Forms	Respondents	Frequency	Total responses	Average time per response	Burden hours
5000–4	565 On occass.	1,456	10 min.	243.	
5000–7	59 On occass.	180	8.5 min.	26.	
Totals	624		1,636		269

*Frequency for each form has changed from ''semi-annually'' to ''on occasion'' because the certification is good for as long as this person continues to satisfy the requirements necessary for qualification and is employed at the same mine or by the same independent contractor.

Estimated Total Burden Hours = 269

Estimated Burden Costs = $7,207

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 30, 1996.

George Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 96–2535 Filed 2–6–96; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

Agency: National Bankruptcy Review Commission.

Action: Notice of Public Meeting.

Time and Dates: Friday, February 23, 1996; 10:00 a.m. to 5:00 p.m.; Saturday, February 24, 1996; 9:00 a.m. to 5:00 p.m. (The meeting is tentatively scheduled to continue Saturday, February 24, 1996. For confirmation of the meeting and meeting time, please contact the office on Friday, February 23, at (202) 273–1813).

Place: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center/ Education Center, One Columbus Circle, N.E., Washington, D.C. 20002. The public should enter through the South Lobby entrance of the Thurgood Marshall Federal Judiciary Building.

Status: The meeting will be open to the public.

Matters to be Considered: General bankruptcy law matters, with an emphasis on the topic of bankruptcy administration, and other substantive areas for future consideration and general administrative matters relating to the organization of the Commission and future meetings and hearings.

Contact Persons For Further Information: Contact Jarilyn Dupont or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, D.C., (202) 273–1813.

Jarilyn Dupont,

Executive Director/General Counsel.

[FR Doc. 96–2538 Filed 2–6–96; 8:45 am]

BILLING CODE 6820–36–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications Systems (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be held on Wednesday, February 28, 1996, from 8:30 a.m. to 3:15 p.m. The Business Session will be held at the Department of State, 2101 C Street, NW., Washington, DC. The Executive Session will be held at Old Executive Office Building. The agenda is as follows:

—Call to Order/Welcoming Remarks
—Manager's Report
—Information Assurance Topics
—IES Report of Activities
—Wireless Service Task Force Report
—National Information Infrastructure Task Force Report
—Network Security Group Report
—Information Assurance Task Force Report
—Adjournment

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

FOR FURTHER INFORMATION CONTACT: Telephone (703) 607–6221 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 96–2530 Filed 2–6–96; 8:45 am]

BILLING CODE 5000–03–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–003]

Consolidated Edison Company of New York Inc. (Indian Point Unit No. 1); Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility

By application dated October 17, 1980, as revised October 13, 1981; July 31, 1986; March 28, 1988; August 10, 1989; March 28 and July 17, 1990; February 5, April 2, July 31, September 20, and October 12, 1993; May 13 and August 11, 1994; and July 19, 1995; Consolidated Edison Company of New York, Inc. (the licensee) requested the U.S. Nuclear Regulatory Commission (the Commission, NRC) to approve its proposed Decommissioning Plan (Plan) for Indian Point Unit No. 1 (IP–1) and an amendment to Provisional Operating License No. DPR–5 and the associated Technical Specifications (TSs) to make them consistent with the Decommissioning Plan. The Decommissioning Plan proposes long-term safe storage (SAFSTOR) of IP–1 spent fuel and residual radioactivity until the adjacent Indian Point Unit No. 2 (IP–2) has been permanently shut down. The licensee must submit a detailed dismantling plan for NRC review and approval prior to major dismantlement activities at IP–1.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing was published in the Federal Register on December 31, 1985, (50 FR 53407). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that decommissioning as stated in the Plan is consistent with the regulations in 10 CFR Chapter I and will not be inimical to the common defense and security or to the health and safety of the public. The basis for these findings is given in the concurrently issued Safety

Evaluation by the NRC Office of Nuclear Reactor Regulation.

The Decommissioning Plan supplements the IP–1 Safety Analysis Report. Accordingly, a license condition has been added allowing the licensee to make changes to the Decommissioning Plan and Safety Analysis Report after performing a review based upon criteria similar to the criteria of Title 10 of the Code of Federal Regulations (10 CFR 50.59) to ensure that such changes do not involve an unreviewed safety question.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. The Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared. The Notice of Issuance of Environmental Assessment was published in the Federal Register on January 31, 1996.

Accordingly, pursuant to Sections 103, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.82, the Commission approves the proposed Decommissioning Plan, dated October 17, 1980, as revised, and authorizes decommissioning of the IP–1 facility in accordance with the Decommissioning Plan and the Commission's rules and regulations, subject to the following conditions:

(a)(1) The approved Decommissioning Plan supplements the Final Safety Analysis Report (FSAR) and the licensee may (i) make changes in the facility or procedures as described in the FSAR or the Decommissioning Plan and (ii) conduct tests, or experiments not described in the FSAR or Decommissioning Plan, without prior Commission approval, unless the proposed changes, tests or experiments involve (a) a change in the Technical Specifications (TSs) incorporated in the license or (b) an unreviewed safety question, or (c) major dismantlement activities such as removal of the reactor pressure vessel or other major radioactive components.

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the FSAR and/or the Decommissioning Plan may be increased or (ii) if the possibility of an accident or malfunction of a different type than evaluated previously in the FSAR and/or the Decommissioning Plan may be created; or (iii) if the margin of safety as defined in the basis for any TS is reduced.

(b)(1) The licensee shall maintain records of changes in the facility and of changes in procedures made pursuant to this section if these changes constitute changes in the facility or procedures as described in the FSAR or Decommissioning Plan. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records must include a written safety evaluation that provides the basis for determining that the changes, tests, or experiments do not involve an unreviewed safety question.

(2) The licensee shall annually submit, as specified in 10 CFR 50.4, a report containing a brief description of any changes, tests, and experiments, including summaries of the safety and environmental evaluation of each.

(3) The licensee shall maintain the records of changes in the facility until the date of termination of the license and shall maintain the records of changes in procedures and records of tests and experiments for 3 years.

(c) If the licensee desires (1) a change in the TSs, or (2) to (i) make a change in the facility or the procedures described in the FSAR or Decommissioning Plan, or (ii) conduct tests or experiments that are not described in the FSAR or Decommissioning Plan, and such changes, tests, or experiments involve an unreviewed safety question, a change in the TSs, or major dismantlement activities, the licensee shall submit an application to amend its license pursuant to 10 CFR 50.90.

For further details with respect to this action, see: (1) The licensee's application for authorization to decommission the facility, dated October 17, 1980, as revised; (2) Amendment No. to License No. DPR–5; (3) the related NRC Safety Evaluation; and (4) the NRC Environmental Assessment and Finding of No Significant Impact. These documents are available for public inspection at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 31st day of January 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–2601 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The tile of the information collection: Grant/Cooperative Agreement Provisions.

2. Current OMB approval number: 3150–0107.

3. How often the collection is required: On occasion, one time.

4. Who is required or asked to report: Recipients of NRC grants or cooperative agreements.

5. The number of annual respondents: 216.

6. The number of hours needed annually to complete the requirement or request: 1068.5.

7. Abstract: The Division of Contracts uses provisions, required to obtain or retain a benefit in its awards and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

Submit by April 8, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (lower level), Washington DC.

Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's

Advanced Copy Document Library), NRC subsystem at FedWorld on 703–321–3339. Members of the public who are located outside the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, D.C., 20555–0001, (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2602 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 33, ''Specific Domestic Licenses of Broad Scope for Byproduct Material''.

2. Current OMB Approval Number: 3150–0015.

3. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year resubmittal of the information for renewal of the license.

4. Who is required or asked to report: All applicants requesting a license of broad scope for byproduct material and all current licensees requesting renewal of a broad scope license.

5. The number of annual respondents: 177 NRC broad scope licensees and 354 Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: 4,425 hours for NRC licensees and 8,850 hours for Agreement State licensees.

7. Abstract: 10 CFR Part 33 contains mandatory requirements for the issuance of a broad scope license authorizing the use of byproduct material. The subparts cover specific requirements for obtaining a license of broad scope. These requirements include equipment, facilities, personnel, and procedures adequate to protect health and minimize danger to life or property.

Submit, by April 8, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2603 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 31, ''General Domestic Licenses for Byproduct Material''.

2. Current OMB Approval Number: 3150–0016.

3. How often the collection is required: Reports are submitted as events occur. Registration certificates may be submitted at any time. Changes to the information on the registration certificate are submitted as they occur.

4. Who is required or asked to report: Persons desiring to own byproduct material and persons desiring to possess and use byproduct material in certain items.

5. The number of annual respondents: 170 NRC licensees and 340 Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: 2,634 hours for NRC licensees and 5,265 hours for Agreement State licensees.

7. Abstract: 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material. General licensees are required to keep records and submit reports identified in Part 31 in order for NRC to determine with reasonable assurance that devices are operated safely and without radiological hazard to users or the public. The revision reflects an overall increase in burden. There has been a decrease in burden for NRC licensees, due to a smaller number of general

licensees and fewer reports being filed by general licensees. However, the burden for Agreement State licensees was not included in the previous burden.

Submit, by April 8, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2604 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission: Revision.

2. The title of the information collection: 10 CFR Part 50.76 ''Reporting Reliability and Availability Information for Risk-Significant Systems and Equipment.''

3. The form number, if applicable: Not Applicable.

4. How often the collection is required: Annually.

5. Who will be required to report: Licensees for commercial nuclear power reactors.

6. An estimate of the number of respondents: 110

7. The estimated number of annual responses: 110

8. An estimate of the total number of hours needed annually to complete the request: 151,200 (1375 hours per response). In addition, there is a one-time implementation burden of 46,550 hours which, annualized over three years, will be 15,520 hours (141 hours per licensee). Total initial annual burden will therefore be 166,720 hours (1516 hours) per licensee.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require that licensees for commercial nuclear power reactors report summary reliability and availability data for risk-significant systems and equipment to NRC. In addition, the records and documentation that provide the bases for the summary data reported to the NRC shall be maintained on site and made available for NRC inspection. This mandatory information would improve the NRC's ability to make risk-effective regulatory decisions consistent with the Commission's policy statement on the use of probabilistic risk assessments. The risk-significant systems and equipment for which data would be provided are a subset of the systems and equipment within the scope of the maintenance rule, 10 CFR 50.65.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C. 20037. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. The electronic copy of this document will be in the NRC PDR library that can be selected from any FedWorld library. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions should be directed to the OMB reviewer by March 8, 1996: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0011), NEOB–10202, Office of Management and Budget, Washington, D.C. 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 30th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2605 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 241, ''Report of Proposed Activities in Non-Agreement States''

2. Current OMB approval number: 3150–0013

3. How often the collection is required: NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State. The NRC may waive the requirements for filing additional

copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a person engaging in activities under the general license.

4. Who is required or asked to report: Any persons who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States under the general license in 10 CFR 150.20.

5. The number of annual respondents: The NRC annually receives approximately 4,600 responses from Agreement States associated with NRC Form 241. These responses include 200 initial reciprocity requests on NRC Form 241, and 1,100 revisions and 3,300 clarifications of the information submitted on the forms.

6. The number of hours needed annually to complete the requirement or request: 1,200 hours

7. Abstract: Under the reciprocity provisions of 10 CFR Part 150, any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States under the general license in Section 150.20 is required to file four copies of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States,'' and four copies of its Agreement State license at least 3 days before engaging in each such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Submit, by April 8, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of January, 1996.

For the Nuclear Regulatory Commission

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2606 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The tile of the information collection: NRC Form 450, General Assignment.

2. Current OMB approval number: 3150–0114.

3. How often the collection is required: Once during the closeout process.

4. Who is required or asked to report: Contractors, Grantees, and Cooperators.

5. The number of annual respondents: 150.

6. The number of hours needed annually to complete the requirement or request: 300 hours (2 hours per response).

7. Abstract: During the contract closeout process, the NRC requires the contractor to execute a NRC Form 450, General Assignment. Completion of the form grants the government all rights, titles, and interest to refunds arising out of the contract performance.

Submit by April 8, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld at 703–321–3339. Members of the public who are located outside the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions should be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, (301) 415–7233, or by Internet electronic mail at BJS@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2607 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection

request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 313, ''Application for Material License.''

2. Current OMB approval number: 3150–0120.

3. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year re-submittal of the information for renewal of the license.

4. Who is required or asked to report: All applicants requesting a license for byproduct or source material.

5. The number of annual respondents: 2,669 NRC licensees and 6,922 Agreement State licensees. The NRC has published a final rule, ''One-Time Extension of Certain Byproduct, Source, and Special Nuclear Materials Licenses'' on January 16, 1996, with an effective date of February 15, 1996. This rule implements, on a one-time basis, a 5-year extension of certain byproduct, source, and special nuclear materials licenses. It is expected that approximately 80 percent of NRC licenses will qualify for the one time extension. An 80 percent reduction in the number of anticipated renewals during the OMB clearance period was used in calculating the burdens.

6. The number of hours needed annually to complete the requirement or request: 18,683 hours for NRC licensees and 48,454 hours for Agreement State licensees (an average of 7 hours per response).

7. Abstract: Applicants must submit NRC Form 313 to obtain a specific license to possess, use, or distribute byproduct or source material. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety of the public, and minimize danger to life or property.

Submit, by April 8, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of January, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2608 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Severe Accidents; Notice of Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on March 1, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, March 1, 1996—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the status of issues associated with severe accident research programs such as direct containment heating and hydrogen control, and the status of implementing programs for severe accident management at nuclear power plants. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 1, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch

[FR Doc. 96–2598 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on February 29, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 29, 1996—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss a PRA model to evaluate fire risk during a self-induced station blackout and scoping analyses of the degraded fire barriers developed by the Brookhaven National Laboratory, the status of the NRC Fire Protection Action Plan, and the assessment of fire models developed for performance based fire protection regulations. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Brookhaven National Laboratory, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 1, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–2599 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on February 22 and 23, 1996, in Room 159 of the Idaho National Engineering Laboratory (INEL), Energy Research Office Building, 2525 North Freemont Street, Idaho Falls, Idaho.

Most of the meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, February 22, 1996 - 8:30 a.m. until the conclusion of business.

Friday, February 23, 1996 - 8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC Office of Nuclear Regulatory Research (RES) confirmatory test and analysis program under way in support of the AP600 design certification review. Specifically, the Subcommittee will review the RES approach and method for demonstrating the adequacy of the RELAP5/MOD3 code to analyze the behavior of the AP600 passive plant design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Idaho National Engineering Laboratory, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 1, 1996

Sam Duraiswamy,

Chief Nuclear Reactors Branch

[FR Doc. 96–2600 Filed 2–6–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 78–11]

Notice of Intention To Request Review of an Expiring Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for a clearance of an expiring information collection. RI 78–11, Medicare Part B Certification, is used to determine eligibility for a Government contribution toward the cost of Medicare Part B if enrolled in the Retired Federal Employees Health Benefits Program.

We estimate 300 RI 78–11 forms are completed annually. Each form takes approximately 10 minutes to complete for an annual estimated burden of 50 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-Mail to jmfarronmail.opm.gov

DATES: Comments on this proposal should be received on or before April 8, 1996.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, 1900 E Street, NW., Room 3349, Washington, DC 20415–0001.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:

Mary Beth Smith-Toomey, Team Leader Management Services Division (202) 606–0623.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.
[FR Doc. 96–2544 Filed 2–6–96; 8:45 am]
BILLING CODE 6325–01–M

Notice of Intention To Request Review of an Expiring Information Collection Reemployment of Annuitants, 5 CFR 837.103

Editorial Note: This document was inadvertently omitted from the issue of Monday, February 5, 1996. It is published as set forth below.

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for a clearance of an expiring information collection. Section 837.103 of Title 5, Code of Federal Regulations, requires agencies to collect information from retirees who become employed in Government positions. Agencies need to collect timely information regarding the type and amount of annuity being received so the correct rate of pay can be determined. Agencies provide this information to OPM so a determination can be made whether the reemployed retiree's annuity must be terminated.

We estimate 3,000 reemployed retirees are asked this information annually. It takes each reemployed retiree approximately 1 minute to complete for an annual estimated burden of 50 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-Mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before April 5, 1996.

ADDRESSES: Send or deliver comments to—

John Landers, Chief, Retirement Policy Division, Retirement and Insurance Service, 1900 E Street, NW, Room 4351, Washington, DC 20415–0001

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Team Leader, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.
[FR Doc. 96–2286 Filed 2–2–96; 8:45 am]
BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Certification of Relinquishment of Rights: OMB 3220–0016. Under Section 2(e)(2) of the Railroad Retirement Act (RRA), an age and service annuity, spouse annuity, or divorced spouse annuity cannot be paid unless the Railroad Retirement Board (RRB) has evidence that the applicant has ceased railroad employment and relinquished rights to return to the service of a railroad employer. Under Section 2(f)(6) of the RRA, earnings deductions are required each month an annuitant works in certain non-railroad employment termed Last Pre-retirement Non-Railroad Employment.

Normally, the employee or spouse relinquishes rights and certifies that employment has ended as part of the annuity process. However, this is not always the case. In limited circumstances, the RRB utilizes Form G–88, Certification of Termination of Service and Relinquishment of Rights, to obtain an applicant's report of termination of employment and relinquishment of rights. One response is required of each respondent. Responses are required to obtain or retain benefits. A minor editorial change is being made to Form G–88.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual re-sponses	Time (Min)	Burden (Hrs)
G–88	3,600	6	360

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 96–2528 Filed 2–6–96; 8:45 am]
BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Representative Payee Parental Custody Monitoring.
(2) *Form(s) submitted:* G–99d.
(3) *OMB Number:* 3220–0176.
(4) *Expiration date of current OMB clearance:* March 31, 1996.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 1,850.
(8) *Total annual responses:* 1,850.
(9) *Total annual reporting hours:* 154.
(10) *Collection description:* Under Section 12(a) of the RRA, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to verify the parent-for-child payee still retains custody of the child.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–2526 Filed 2–6–96; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Railroad Separation Allowance or Severance Pay Report.

(2) *Form(s) submitted:* BA–9.

(3) *OMB Number:* 3220–0173.

(4) *Expiration date of current OMB clearance:* March 31, 1996.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 45.

(8) *Total annual responses:* 7,500.

(9) *Total annual reporting hours:* 9,375.

(10) *Collection description:* Section 7301 of the Railroad Unemployment and Retirement Improvement Act of 1988 (Pub. L. 100–647) provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The collection obtains the information needed from railroad employers concerning the separation allowances paid after 12/31/88.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–2527 Filed 2–6–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36758; File No. S7–3–96]

EDGAR Request For Information; Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the deadline for comment from January 22, 1996 to February 16, 1996 for responses to Securities Exchange Act Release No. 36683 (January 5, 1996), 61 FR 740 concerning proposed system architectures describing possible revisions to its electronic filing system known as EDGAR.

DATES: Responses should be received on or before February 16, 1996.

ADDRESSES: Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, and should refer to File No. S7–3–96. All submissions will be made available for public inspection at the Commission's Public Reference Room, Room 1024, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael Bartell or David Copenhafer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 at (202) 942–8800.

SUPPLEMENTARY INFORMATION: On January 5, 1996, the SEC published a Request for Information inviting comment on proposed system architectures describing possible revisions to its electronic filing system known as EDGAR.[1] Due to several requests for an extension of the deadline, as well as the impact of several disruptive snow storms, the SEC believes it is appropriate to issue the extension. Therefore, the comment period for responding to Securities Exchange Act Release No. 36683 is extended from January 22, 1996 to February 16, 1996.

Dated: January 23, 1996.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 96–2674 Filed 2–2–96; 4:28 pm]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 36683 (January 5, 1996) 61 FR 740 (January 10, 1996).

[Release No. 34–36797; File No. SR–CBOE–96–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Exercise of American-Style Options

January 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 19, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issue a regulatory circular to its membership which clarifies the application of the rules and procedures of the Options Clearing Corporation (''OCC'') to the exercise of American-style options.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed regulatory circular is to make it clear that the holder of an American-style option is able to exercise the option at any time up to the exercise cut-off time on any trading day other than the final trading day, even if the holder has sold the option in a closing sale transaction during that trading day. According to the CBOE, this result follows from OCC's sequencing procedures for processing daily activity on every day other than the final trading day.[1]

Specifically, on every day other than the final trading day, OCC's sequencing procedures provide that opening purchase transactions, opening sales transactions, and closing purchase transactions effected on that day are processed before exercises, and exercises are processed before that day's closing sales transactions. As a result, to the extent there is no violation of the CBOE's and OCC's exercise limits, an investor may exercise an option series on any day other than the final trading day to the full extent of the sum of: (1) All the long positions in his account at the opening of that day, plus (2)(a) (in the case of a firm or customer) all positions resulting from the investor's opening purchase transactions on that day without deduction for that day's closing sales transactions, or (b) (in the case of a market maker) all positions resulting from the market maker's purchase transactions that day without deduction for the market maker's sales transactions effected that day.[2] If the number of contracts sold by an investor in closing sales transactions exceeds the number of long positions remaining in the account after the exercises are processed, OCC treats the excess as having been sold in opening sales transactions and the contracts are subject to being assigned exercises. However, a brokerage firm or clearing member may have procedures which would prevent an investor from effecting an exercise that would result in changing a closing sales transaction into an opening sales transaction.

The CBOE's proposed regulatory circular provides several examples illustrating how the OCC's procedures apply to both customers and market makers. In addition, the proposed regulatory circular notes that OCC's sequencing procedures for processing activity on the final trading day provide for the processing of all purchase and sales transactions before exercises and assignments are processed. As a result, on the final trading day an investor may not exercise more than the investor's long positions remaining after netting any short position the investor may have at the opening that day and all options contracts the investor sells that day.

According to the CBOE, the OCC procedures described in the proposed regulatory circular are not new. Nonetheless, the Exchange believes it is important for all members to have the same understanding of these procedures and how they affect exercises. By making Exchange members and their customers better informed as to the procedures that apply to the exercise of American-style options, the CBOE believes that the publication of the proposed regulatory circular will serve to further the purposes of Section 6(b) of the Act, in general, and of Section 6(b)(5), in particular, by promoting just and equitable principles of trade and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that issuances of the proposed regulatory circular will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed regulatory circular.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change constitutes a stated policy, practice or interpretation with respect to the administration of an existing CBOE rule. Accordingly, the proposal has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2617 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

[1] For purpose of the proposed regulatory circular, the final trading day is the expiration date of options that trade on their expiration date or the last trading day prior to the expiration date for all other options.

[2] Market makers are not required to mark their transactions as opening or closing transactions. Customer transactions must be marked as opening or closing transactions.

[3] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36798; File No. SR–DTC–95–14]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Seeking Depository Eligibility of Fractional Shares and Cent-Denominated Securities

January 31, 1996.

On August 4, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–95–14) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on November 6, 1995.[2] No comment letters were received. For the reasons discussed below, the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36436 (October 30, 1995), 60 FR 56079.

Commission is approving the proposed rule change.

I. Description of the Proposal

Under the rule change, cent-denominated securities and fractional shares of securities will be eligible for book-entry deliver and other DTC services. The proposal is being made in response to requests made by DTC participants.[3] This rule change anticipates the accelerated securities processing environment that will be triggered by the conversion of DTC's money settlement system to an entirely same-day funds settlement (''SDFS'') system.[4] DTC will implement the eligibility of fractional shares on a voluntary basis.

Under the rule change, DTC estimates that approximately 6,000 cent-denominated issues will become eligible for book-entry delivery. Of those 6,000 issues, DTC estimates that 350 are treasury receipts.[5] Participants now will be able to deposit cent-denominated securities at DTC by using DTC's Deposit Automation Management (''DAM'') service.[6] In recording participants' deposits, DTC will ''truncate'' (*i.e.*, cut off) the cents portion of the aggregate dollar figure for the deposited securities. Having eliminated the cents portion from the position, DTC only will reflect the whole dollar amount of deposits in the participant's account at DTC.[7] All related services and transactions thereafter will be effected in whole dollar increments, including principal and income payments.[8]

The truncated amounts will be collected in an internal DTC account. DTC has stated that the sum is not expected to be significant at first and therefore will not warrant the expense of developing a complex system to enable DTC to credit the truncated cents to each respective depositing participant. Instead, the cents and any income derived therefrom will become part of DTC's general revenues. Because DTC refunds revenues in excess of its costs to its participants, DTC in effect will pass along the value of the truncated cents to participants as part of DTC's general refund when and if refunds of excess revenues are distributed.[9] Participants also will forfeit any voting rights on truncated cents.

In time, depending on the size of the accumulated truncated amounts, DTC may reconsider developing a tracing mechanism to enable it credit these amounts to the accounts of depositing participants. In order for the Commission to monitor the magnitude of the truncated amounts, DTC will provide to the Commission annual written notice of the total amount of the general refund distributed to DTC participants that is generated from such truncated amounts [10] and the number of issues from which cents were truncated.[11] However, at this time, DTC believes that the actual financial effect on tits participants of the cent truncation will be negligible and well within industry practice for reconciling de minimis differences in such things as deliveries and deposits.

Under the new rule, DTC also is implementing a voluntary depository eligibility program for securities denominated in fractional shares.[12] DTC will carry the fractional portions under a contra-CUSIP number with full shares being reflected in the primary CUSIP. Deliver orders and pledges will not initially be permitted to be denominated in fractional shares.[13] However, as the fractional shares accumulate to constitute full shares, DTC participants will have the option to move the shares from the contra-CUSIP to the primary CUSIP where the shares will be eligible for all activities.[14] Alternatively, the accumulated fractional shares can be left in the contra-CUSIP. DTC also will provide enhanced physical processing so that deposits and withdrawals-by-transfer containing both whole and fractional shares can be combined. DTC will handle the process of separating the whole shares to the primary CUSIP and the fractional shares to the contra-CUSIP.

[3] The results of a survey conducted by DTC in 1992 showed that most responding participants wished to have certain types of issues not then eligible for depository services made DTC-eligible. Among others, cent-denominated securities and fractional shares were securities participants requested be made depository eligible. Subsequently, DTC distributed to its participants a notice dated August 24, 1994, which outlines the specific procedures to be employed in connection with the proposed services. In response to the August notice, seven commenters favored making cent-denominated securities eligible for book-entry delivery while our commenters did not. The dissenters generally stated that either such services were unnecessary in relation to their expense or that the proposed services would fail to provide any improvement in the way DTC participants currently process such securities. With regard to fractional shares, commenters generally favored making such shares depository eligible but ten commenters disfavored DTC's use of a contra-CUSP to identify the fractional shares. Six commentes favored the use of the contra-CUSIP. Dissenting commenters cited the anticipated difficulties in CUSIP and contra-CUSIP reconciliation as well as in providing programming resources to accommodate the contra-CUSIP given that such resources were seen as already fully committed to the upcoming change to a same-day funds settlement system and the conversion to a T+3 settlement cycle. To address its participants' concerns evidenced in the earlier letters, DTC devised the current proposal that provides for voluntary implementation of services for fractional shares. This newer, more flexible approach was described to participants in a notice dated December 14, 1994.

[4] The term ''same-day funds'' refers to payment in funds that are immediately available and generally are transferred by electronic means. Currently, transactions in equities, corporate debt, and municipal debt are settled in ''next-day funds'' (a term that refers to payment by means of certified checks that are for value on the following day). Transactions in commercial paper and other money market instruments are settled in same-day funds. On February 22, 1996, all issues currently settling in next-day funds will convert to settlement in same-day funds.

[5] This estimate is based on information compiled by a DTC participant. Treasury receipts are proprietary products of broker-dealers created by stripping the coupons from U.S. Treasury securities (''Treasuries'') with the resulting instrument representing an interest in the stripped coupons or in the remaining principal (*i.e.* zero coupon products). The U.S. Treasury now issues STRIPS (Separate Trading of Registered Interest and Principal of Securities) bonds which essentially have replaced the Treasury receipt in function. The Treasury issues STRIPS in a format that allows dealers to sell them immediately as zero-coupon products and does not require the repacking steps that are necessary to transform straight Treasuries into zero-coupon instruments. Other newly eligible issues will include church bonds and various other securities types. Church bonds are securities issued by religious organizations to finance building or renovation projects. These securities typically are issued in small dollar amount within a confined geographical area.

[6] DAM is an enhanced automated deposit service that enables DTC participants to send details of deposits to DTC in advance of forwarding the physical certificates. For a complete description of DTC's DAM service, refer to securities Exchange Act Release No. 33412 (January 4, 1994), 59 FR 1769 [File No. SR–DTC–93–09] (order approving proposed rule change).

[7] For example, if a participant deposits ten certificates at $1.15, $11.00 will be credited to the participant's DTC account, and the remaining fifty cents will be truncated.

[8] Under the rule change, participants will garner the benefit of administrative efficiencies that will attend the elimination of centers. Specifically, fewer keystrokes will be required to enter dollar values, and less record surveillance will be required to account for and reconcile amounts less than a dollar.

[9] Any refunds from the truncation program will be distributed to all DTC participants and not only those participants depositing cent-denominated securities.

[10] Telephone conversation between Jack Weiner, Associate Counsel, DTC, and Mark Steffensen, Attorney, Division of Market Regulation (''Division''), Commission (January 26, 1996).

[11] Telephone conversation between Jack Wiener, Associate Counsel, DTC, and Jerry W. Carpenter, Assistant Director, and Peter R. Geraghty, Senior Counsel, Division, Commission (January 31, 1996).

[12] A fractional share is a unit of stock less than one full share.

[13] DTC also is investigating the possibility of developing and providing a limited delivery capability that would require receiver authorization prior to a delivery being made.

[14] DTC participants also will have the ability to break up full shares under the primary CUSIP into fractional shares under the contra-CUSIP although the resulting fractional shares will not be initially eligible for deliver orders or for pledging purposes.

II. Discussion

Section 17A(b)(3)(F)[15] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of transactions. The Commission believes DTC's proposed rule change is consistent with DTC's obligations under the Act because it will make cent-denominated shares and fractional shares eligible for deposit at DTC and thus eligible for other DTC services. The rule change will allow DTC participants to remove cent-denominated securities and fractional share certificates from their vaults and to deposit them at DTC. Including cent-denominated securities and fractional shares in the class of securities eligible for deposit at DTC should help to eliminate the costly, cumbersome, and inefficient physical processing of these securities thus promoting the prompt and accurate clearance and settlement of transactions in these types of securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2539 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36784; File No. SR–Phlx–95–79]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Bid Test Exemption

January 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 2, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Rule 1072, Reporting Requirements Applicable to Short Sales in NASD/NM Securities, to permit affiliated Registered Option Traders (''ROTs'') to trade for each other's account pursuant to the market maker exemption contained therein. Rule 1072 establishes specific criteria exempting Phlx specialists and ROTs from the NASD's ''bid test'' applicable to Nasdaq/National Market (''NM'') securities. The NASD bid test, with certain exception, prohibits short sales at or below the current inside bid when that bid is below the previous inside bid.[2] Specifically, the Phlx proposes to extend its market maker exemption to include short sales by affiliated ROTs as ''by or for a qualified options market maker'' consistent with Rule 1072(c)(2). The proposed language in Rule 1072(c)(2)(iii)(A) would thus permit ROTs of the same member organization to trade pursuant to the exemption, even when the ROT trading the account has not designated that NM issue.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1994, the NASD adopted a bid test rule applicable to NM securities traded through Nasdaq prohibiting short sales of NM securities at or below the current inside bid when that bid is below the previous inside bid.[3] An exemption from this rule exists for option market makers hedging options positions with the related underlying securities, and the qualifying short sales are referred to as ''exempt hedge transactions.'' Pursuant to this market maker exemption, the Phlx adopted Rule 1072 establishing specific criteria for a short sale to qualify as an ''exempt hedge transaction'' in ''designated'' NM issues.[4] Generally, option specialists may rely on the exemption for short sales in NM securities underlying their specialist equity options, and index options if at least 10% of the value of the index is comprised of NM securities. In addition, ROTs must be assigned in that option to rely on the exemption and may only use the exemption in 20 designated NM issues.

The Phlx now proposes to permit affiliated ROTs to trade one another's accounts pursuant to Rule 1072. Specifically, the amendment would allow an ROT to effect bid test exempt short sales in a Nasdaq/NM security which that ROT has not designated as qualifying for the exemption, provided that the security is a designated Nasdaq/NM security of another ROT of the same member organization, and further provided that such other ROT is not also present or represented by a Floor Broker in the same trading crowd at the time of the bid test exempt sale. The Exchange notes that this amendment is similar to a CBOE proposal to permit nominees of a market maker organization to qualify for the exemption.[5]

The Phlx believes that the proposed amendment should facilitate ROT activity by allowing member organizations to manage better their market making activities. Managing these obligations and monitoring positions is especially critical when a ROT is absent from the trading floor. The Exchange also believes that the proposed provision is consistent with the intent of the market maker exemption to the short sale rule, in that the exemption continues to be limited to those Nasdaq/NM securities which are

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[15] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[16] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] NASD Rules of Fair Practices, Art. III, Section 48.

[3] Securities Exchange Act Release No. 34277 (June 6, 1994), 59 FR 34885 (granting temporary approval).

[4] Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999. The other options exchanges adopted rules similar to Phlx Rule 1072. See Chicago Board Options Exchange (''CBOE'') Rule 15.10, New York Stock Exchange (''NYSE'') Rule 759A, American Stock Exchange (''Amex'') Rule 957, and Pacific Stock Exchange (''PSE'') Rule 4.19. *Id.*

[5] Securities Exchange Act Release No. 35281 (January 26, 1995), 60 FR 6575.

used to hedge option transactions in the primary classes in which the member organization makes markets.

For these reasons, the Exchange believes that its proposal is consistent with Section 6 of the Act in general, and in particular with Section 6(b)(5) in that it is designed to promote just and equitable principals of trade, and remove impediments to and perfect the mechanism of a free and open market while preventing fraudulent and manipulative acts and practices.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Phlx–95–79 and should be submitted by February 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2542 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36794 File No. SR–Amex–95–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc., Relating to the Listing and Trading of Warrants on the Emerging Markets Debt Index

January 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 26, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On January 16, 1996 the Amex filed Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice and Amendment No. 1 to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade warrants based on the Emerging Markets Debt Index (''EMDX''sm).[2]

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 107 of the Amex Company Guide, the Exchange is proposing to list index warrants on the EMDX. Futures contracts and futures options on the EMDX currently trade on the FINEX division of the New York Cotton Exchange (''NYCE''). The Commission recently provided to the Commodity Futures Trading Commission (''CFTC'') a non-objection letter regarding the trading of EMDX futures and futures options.[3]

Index Description

The EMDX is an index of U.S. dollar-denominated, Brady par bonds[4] of four major Latin American countries. The Index is calculated by multiplying the market price of the Brady par bonds of Mexico, Argentina, Brazil and Venezuela by their corresponding bond weight and summing their products. According to the Exchange, these Brady par bonds are the most liquid and

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[6] 17 CFR 200.30–3(a)(12)(1994).

[1] In Amendment No. 1, the Amex states that it will list EMDX warrants under Section 107 of the Amex Company Guide (''Other Securities'') rather than under Section 106 (''Currency and Index Warrants''). However, the account opening, trading, advertising, suitability and other provisions of Part VII of the Exchange's rules (Rules 1100 through 1110) applicable to broad based stock index warrants will apply to EMDX warrants. See Letter from William Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory Policy, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated January 11, 1996 (''Amendment No. 1'').

[2] EMDX is a servicemark of the New York Cotton Exchange.

[3] See letter from Jonathan G. Katz, Secretary, Commission, to Elisse B. Walter, General Counsel, CFTC, dated October 10, 1995 (''non-objection letter'').

[4] Brady bonds are issued pursuant to the plan proposed by former Secretary of the Department of the Treasury, Nicholas Brady, which allows developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds. There are several types of Brady bonds, but ''par Bradys'' and ''discount Bradys'' represent the great majority of issues in the Brady bond market. In general, both par Bradys and discount Bradys are secured as to principal at maturity by U.S. Treasury zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

actively traded of all Brady bonds, making the EMDX a significant market benchmark.

The weighted percentages by country of the Brady par bonds in the EMDX as of May, 1994 were: Mexico 36.2%; Argentina 28.9%. Brazil 19.5% and Venezuela 15.4%. The Index consists of the following U.S. dollar-denominated bonds:

(1) United Mexican States Par Bonds, Series A or B, due December 31, 2019, with all unexpired Value Recovery Rights attached;

(2) Republic of Argentina par Bonds, Series L, due March 31, 2023;

(3) Republic of Venezuela Par Bonds, Series A or B, due March 31, 2020, with all unexpired Oil Obligations attached; and

(4) Federative Republic of Brazil Par Bonds, Series Y–L–3 or Y–L–4, due April 15, 2024. Effective October 15, 1995 or on such other date as determined by the Federative Republic of Brazil for the phase in of collateral for the Series Y–L–3, the eries Y–L–3 shall be replaced by Series Z–L Par Bonds and Series Y–L–4. The weights of the Series Z–L and the remaining Series Y–L–4 Par Bonds shall be .097 and .098, respectively. Effective April 15, 1996 or on such other date as determined by the Federative Republic of Brazil for the phase in of collateral for the Series Y–L–4, the bond weight of the Series Z–L Par bonds shall be increased to .195, and the Series Y–L–4 Par Bonds shall be deleted from the Index.

The EMDX is calculated by multiplying the market price of a bond (the dollar price per $100 face value) by its corresponding bond weight and summing these products for all bonds in the EMDX. Thus, the formula for calculating the EMDX is as follows:

$$EMDX = MX_c*.362 + AR_c*.289 + BR_c*.195 + VZ_c*.154$$

Where: ''c'' refers to the current par bond price. The EMDX was designed to have a base value of 50 as of May 3, 1994. As of December 21, 1995 it had a value of 57.20.

At the time the Commission issued its non-objection letter for EMDX futures and futures options trading, the EMDX represented an approximate face amount of $47.6 billion in U.S. dollar-denominated Brady bonds. Reported 1994 inter-dealer trading volume in the component bonds of the Index was approximately $408 billion on about 135,000 trades. Thus, the average trade size in the Brady Par Bonds represented in the Index was approximately $3.02 million and average daily trading volume was 519 transactions. The Exchange represents that the bonds included in the EMDX are the most actively traded and liquid issues of all Brady Par Bonds.

The FINEX calculates and disseminates the EMDX continuously during trading hours on a real time basis using last trade prices for the subject Brady bonds from the screens of the leading interdealer brokers. The NYCE has agreements with Euro Brokers Capital Markets, Inc., Chapdelaine Corporate Securities, RMJ Securities, Tullet & Tokyo Ltd. and Tradition, Inc. to provide this information.[5]

Warrant Description and Regulatory Framework

Although the warrants will be listed pursuant to Section 107 of the Company Guide, the Exchange proposes to apply certain rules applicable to stock index warrants to the proposal EMDX warrants. Thus, the listing standards of Section 106 of the Company Guide will apply to the EMDX warrants,[6] and the account opening, trading, advertising, suitability and other provisions of Part VII of the Exchange's rules (Rules 1100 through 1110) applicable to stock index warrants also will apply to EMDX warrants. EMDX warrants also will be subject to the customer margin rules applicable to stock index warrants.

The proposed warrants may be exercised by holders prior to expiration, *i.e.*, they will be ''American style.'' At expiration, or upon early exercise, warrant holders will receive a payment per warrant from the issuer equal to the greater of zero or $1 times the value of the EMDX at exercise minus the strike price. (The underwriter anticipates that the strike price will be set at the level of the EMDX at the time of warrant issuance). The warrants, accordingly, will be structured as a call on the EMDX.

The issuer will determine the value of the EMDX at expiration, or upon early exercise, in the following manners. In the event of early exercise, a calculation agent will determine the bid price for the constituent bonds. This price will be the higher of the bid prices of the calculation agent and one reference bank for each of the subject bonds. The calculation agent will then determine the value of the EMDX using the bid prices so derived for each bond in the Index. At expiration, the prices for the relevant bonds will be the higher of the bid prices obtained by polling two reference banks. Each reference bank will be a leading market maker in the relevant bonds.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

[5] All of these brokers are members of the National Association of Securities Dealers (''NASD''). Accordingly, the Amex would be able to obtain information relative to transactions in the securities underlying the EMDX pursuant to its information sharing arrangements with the NASD under the Intermarket Surveillance Group (''ISG'') Agreement. *See* Letter from William Floyd-Jones, Assistant General Counsel, Legal and Regulatory Policy Division, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated January 19, 1996.

[6] Section 106(e), however, requires issuers to use opening prices for stocks traded primarily in the U.S. during the two business days prior to the determination of final settlement value to determine settlement value. The Exchange does not propose to extend this ''opening price'' requirement to the proposed EMDX warrants as the Exchange believes that the volatility concerns with respect to listed stocks have not been extended to debt instruments such as Brady bonds.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–95–56 and should be submitted by February 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2540 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36785; File No. SR–Phlx–95–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc; Relating to the Bid Test Exemption

January 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 2, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Rule 1072, Reporting Requirements Applicable to Short Sales in NASD/NM Securities, which establishes specific criteria exempting Phlx specialists and Registered Option Traders (''ROTs'') from the National Association of Securities Dealers, Inc. (''NASD'') ''bid test'' applicable to National Market (''NM'') securities. The NASD bid test, with certain exceptions, prohibits short sales at or below the current insider bid when that bid is below the previous inside bid.[2] Specifically, the Phlx proposes to extend its market maker exemption to: (1) Permit an off-floor option or stock option order hedged contemporaneously with an NM security to be eligible for the exemption, with prior Floor Official approval and filing of a written report; and (2) allow the exemption to apply to a company that is involved in a publicly announced merger or acquisition (''M&A'') with an NM security.

First, sub-paragraph (A) of Phlx Rule 1072(c)(2)(ii) is proposed to be added to permit a ROT to facilitate an off-floor options or combination order and contemporaneously hedge the resulting option position with a short sale in the applicable NM securities as if such securities were designated securities pursuant to the Rule. The ROT must obtain written Floor Official approval and file with the Market Surveillance Department of the Exchange a written report in a form required by the Exchange. Such ROT must retain a copy of the report to demonstrate that the transaction was bid test exempt.

Second, sub-paragraph (B) of Phlx Rule 1072(c)(2)(ii) is proposed to be added to state that exempt hedge transactions include short sales in M&A securities effected by a qualified Exchange options market maker to hedge, and which in fact serves to hedge, an existing or prospective position in an Exchange-listed option overlying a designated NM security of another company that is a party to the M&A. M&A securities are defined as the securities of a company that is a party or prospective party to a publicly announced merger or acquisition with an issuer of an NM security that underlies an Exchange-listed option.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1994, the NASD adopted a bid test rule applicable to NM securities traded through Nasdaq prohibiting short sales of NM securities at or below the current inside bid when that bid is below the previous inside bid.[3] An exemption from this rule exists for option market makers hedging positions with the underlying securities of that option; qualifying short sales are referred to as ''exempt hedge transactions.'' Pursuant to this market maker exemption, the Phlx adopted Rule 1072 establishing specific criteria for a short sale to qualify as an ''exempt hedge transaction'' in ''designated'' NM issues.[4] Generally, option specialists may rely on the exemption for short sales in NM securities underlying their specialist equity options, and index options if at least 10% of the value of the index is comprised of NM securities. In addition, ROTs must be assigned in that option to rely on the exemption and may only use the exemption in 20 designated NM issues.

The Phlx now proposes to permit the facilitation of certain off-floor orders pursuant to the market maker exemption. The Phlx also proposes to expand the definition of ''exempt hedge transaction'' to include securities involved in an M&A transaction with NM securities. These amendments to the Exchange's exemptive rule are similar to recent changes by other options exchanges.[5]

Facilitating Orders

The Phlx proposes to permit certain hedge transactions in NM securities by a ROT to be considered executed in ''designated'' issues for purposes of qualifying as exempt hedge transactions.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] NASD Rules of Fair Practice, Art. III, Section 48.

[3] Securities Exchange Act Release No. 34277 (June 6, 1994), 59 FR 34885 (granting temporary approval).

[4] Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999. The other options exchanges adopted rules similar to Phlx Rule 1072. See Chicago Board Options Exchange (''CBOE'') Rule 15.10, New York Stock Exchange (''NYSE'') Rule 759A, American Stock Exchange (''Amex'') Rule 957, and Pacific Stock Exchange (''PSE'') Rule 4.19. *Id.*

[5] Respecting facilitation orders, see Securities Exchange Act Release No. 35281 (January 26, 1995), 60 FR 6575 (''CBOE''); and respecting M&A securities, see Securities Exchange Act Release Nos. 35211 (January 10, 1995), 60 FR 3887 (Amex, CBOE, and PSE) as well as 36019 (July 24, 1995), 60 FR 39035 (NYSE).

Such a transaction must contemporaneously hedge an option position resulting from the facilitation of an option or stock-option order originating from off-floor. The Exchange believes that this provision is consistent with the NASD's interpretation regarding hedging activities associated with the facilitation of customer transactions in options, as cited by the Commission in its approval of a similar CBOE provision.[6] To ensure that the transaction qualifies for the proposed provision, the filing of a written report with the Market Surveillance Department of the Exchange, indicating Floor Official approval, is required. Floor Official approval is intended as a monitoring technique. Similarly, the Phlx believes that the written report should aid surveillance efforts regarding Rule 1072 in general, and, more specifically, the requirements of this proposed provision. Surveillance capabilities should be further enhanced by the requirement that a ROT relying on this provision maintain a copy of the report. Thus, the Phlx believes that this facilitation provision should operate consistently with the purposes of the market maker exemption contained in the Rule. Exempting such hedge transactions should promote facilitation orders in the option marketplace as well as liquidity in the underlying NM security.

M&A Transactions

The Phlx proposes to expand the definition of ''exempt hedge transaction'' in its market maker exemption to permit short sales in securities involved in a publicly announced M&A with a designated NM security in order to foster liquidity and promote effective hedging. The Exchange notes that the proposed expansion of the market maker exemption must involve a publicly announced M&A.[7] The Exchange also notes that the NASD provides an exemption from the bid test for risk arbitragers who take positions in stocks involved in M&A transactions,[8] and that the other option exchanges have adopted this change to their respective rules.[9]

As applied to the Phlx specialist, the proposed exemption would apply to short sales of a company that is party to an M&A with a company whose NM security underlies a speciality stock option (or qualified index option). As applied to a Phlx ROT, the exemption would extend to a company that is party to an M&A with a company whose NM security underlies an option designated by such ROT. The Phlx believes that specialists and ROTs may need to hedge option positions with the securities involved in an M&A with the underlying security, whether or not the security of such other company has overlying listed options. This ability to hedge is central to the market making function, and should thereby promote liquidity in the markets for the option as well as both securities.

The Exchange believes that the proposal is consistent with the NASD's bid test rule and addresses the limitations established by the NASD concerning the applicability of the market maker exemption. Specifically, the Phlx believes that the ability to hedge facilitated off-floor option orders constitutes legitimate hedging activity by a ROT with resulting benefits to the marketplace, while restricting the expansion of the exemption to *bona fide,* Exchange-monitored transactions. The Exchange also believes that expanding the definition of exempt hedge transaction to include M&A securities should enable effective hedging in the often-volatile markets surrounding M&A events, which should, in turn, promote liquidity.

For these reasons, the Exchange believes that its proposal is consistent with Section 6 of the Act in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principals of trade, prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market as well as to protect investors and the public interest by promoting options trading where an M&A is involved or an off-floor order seeks facilitation, which, in turn, creates a hedging need, thereby promoting liquidity and the essence of the market making function.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Phlx–95–69 and should be submitted by February 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2541 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

[6] See Securities Exchange Act Release No. 35281, *supra* note 5.

[7] Once an M&A has been publicly announced, a qualified market maker in one of the two affected securities may immediately register as a qualified market maker in the other security, and thus rely on the market maker exemption in such other security. See NASD Rules, Art. III, Section 48(1)(3)(iii).

[8] See Securities Exchange Act Release No. 34277, *supra* note 3.

[9] See Securities Exchange Act Release Nos. 35211 and 36019, *supra* note 5.

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36796; File No. SR–PHLX–95–68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Exercise Price Intervals for Index Options

January 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1996, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, paragraph (a) of PHLX Rule 1101A, ''Terms of Option Contracts,'' states that the PHLX shall determine fixed point intervals of exercise prices for index options. Commentary .02 to PHLX Rule 1101A provides that exercise prices for index options shall be $5.00, except exercise prices in the far-term series of National Over-the-Counter (''XOC'') options, Value Line Composite Index (''VLE'') options, Big Cap Index options and USTOP 100 Index (''TPX'') options shall be $25,00 unless there is demonstrated customer interest at $5.00 intervals.[1] Under the proposal, the exercise (strike) price interval for near-term index options generally will be $5, except: (1) Where the exercise price exceeds $500, the strike price interval may be $10; and (2) where the exercise price exceeds $1,000, the strike price interval may be $20. For out-of-the-money, far-term (fifth month),[2] or long-term index option series (long-term options or ''LEAPS''),[3] the proposal provides that the exercise price interval generally will be $25, except: (1) Where the exercise price exceeds $500, the strike price interval may be $50; and (2) where the exercise price exceeds $1,000, the exercise price interval may be $100. In addition, where the exercise price interval is greater than $5, the PHLX may list exercise prices at $5 intervals in response to demonstrated customer interest or a specialist request. The proposal also allows the PHLX to list exercise prices at wider intervals.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1101A to incorporate new strike (exercise) price intervals for index options. Currently, although PHLX Rule 1101A(a) states that the Exchange shall determine fixed point intervals of exercise prices for index options, the interval is generally $5,[4] except in the far-term series of broad-based index options.[5] The PHLX proposes to widen the exercise price interval for all index options in accordance with a formula which takes into consideration the index value and time until expiration. Specifically, the PHLX proposes to list the following exercise price intervals for index options:

Index value	Near-term strikes	5th month/ LEAPS
500 or less	$5	$25
500 to 999	10	50
1,000 or more	20	100

Where the exercise price interval would be wider than $5, the Exchange proposes to list (fill-in) exercise prices at $5 intervals in response to demonstrated customer interest or a specialist request.

The purpose of the proposal is to list index options with exercise prices at wider intervals, which should reduce the number of index option exercise prices listed on the Exchange. First, the PHLX notes that the proposal is intended to incorporate the PHLX's index option exercise price policy into PHLX Rule 1101A. Currently, Exchange Rule 1101A(a) states that the Exchange shall determine fixed point intervals of exercise prices for index options. The proposal will specifically list the interval, depending upon the index value and the time remaining until expiration.

Second, the Exchange proposes to list higher-priced index options (above 500), as well as far-term (fifth month) series and long-term options, at wider intervals in order to reduce the number of exercise prices. The PHLX states that most Exchange index options currently are listed at 5-point intervals. However, the PHLX has observed that in higher-priced indexes, the need does not exist for $5 exercise price intervals. Similarly, according to the PHLX, in the farthest-month trading as well as with long-term options, $5 intervals are not necessary. The PHLX notes that the bids and offers in many far-term series often are substantially similar because the volatility levels do not differ significantly.

According to the PHLX, narrower exercise price intervals generally are most useful where there is little volatility and in lower-priced series. For equity options, exercise price intervals widen as the strike price increases.[6] The PHLX notes that limited trading volume occurs in the far-term series of index options. Thus, the proposed reduction in exercise prices would be concentrated in the series with the least trading interest.

For high-priced or far-term series, where the PHLX proposes to list exercise prices, generally, at intervals of

[1] Commentary .02 states that, for purposes of the commentary, demonstrated customer interest includes institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a Registered Options Trader (''ROT'') with respect to trading for the ROT's own account.

[2] Under PHLX Rule 1101A(b), the Exchange may list index option series of up to four cycle months and up to three consecutive months. According to the PHLX, most index options currently have five months trading at a given time, consisting of three cycle/quarterly series and two consecutive month series. For example, as of September 1995, the XOC had the following months listed: October, November, December, March, and June.

[3] Under PHLX Rule 1101A(b)(iii), the Exchange may list long-term options with up to 60 months until expiration. *See* Securities Exchange Act Release No. 35616 (April 17, 1995), 60 FR 20135 (April 24, 1995) (order approving File No. SR–PHLX–95–11).

[4] See e.g., Securities Exchange Act Release No. 35591 (April 11, 1995), 60 FR 19423 (April 18, 1995) (order approving File No. SR–PHLX–95–07) (listing of TPX options). The PHLX notes that, generally, the strike price interval of an index option is listed in the contract specifications for the option.

[5] See PHLX Rule 1101A, Commentary .02.

[6] See PHLX Rule 1012, ''Series of Options Open for Trading,'' Commentary .05.

$25 (or at intervals of $50 where the exercise price exceeds $500 or intervals of $100 where the exercise price exceeds $1,000), the PHLX proposes to list series at intervals as narrow as $5 in response to demonstrated customer interest or specialist request. This proposal is similar to existing PHLX Rule 1101A, Commentary .02 which permits the far-term series of broad-based index options to be listed at $25 intervals, unless customer interest exists for a $5 interval. For purposes of the proposal, demonstrated customer interest includes institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by an ROT with respect to trading for the ROT's own account. This limitation and definition of customer interest is intended to ensure that only legitimate customer requests lead to the listing of exercise prices at narrower intervals.

Under the proposal, the Exchange may also determine to list exercise prices at wider intervals. The narrowest permissible interval would remain at $5 under this proposal. The PHLX proposes to delete Commentary .02 from Exchange Rule 1101A because the $25 interval is incorporated in the proposed first paragraph of PHLX Rule 1101A for all index options.

The Exchange believes that the ability to add $5 intervals in response to customer interest is important in that specific trading opportunities will not be lost. In fact, the $25 interval preserves key trading strategies because it often represents a 2½ point index movement, which is similar to a stock trading at $25 with the option traded at 2½ point exercise price intervals. Although the PHLX believes that reducing the number of exercise prices by widening the interval and incorporating such interval into Exchange rules should be beneficial to the marketplace, the flexibility to list exercise prices at intervals of $5 or greater is important to respond to the needs of the marketplace. Thus, Exchange Rule 1101A would permit both narrower (not narrower than $5) and wider exercise price intervals in extraordinary circumstances to permit the PHLX to react to market conditions.

The PHLX states that the effect of the proposal would be to permit $25 intervals in the fifth month and long-term options for most Exchange index options. However, VLE and TPX options would become subject to wider intervals because the value of those indexes exceeds 500. Specifically, as of January 22, 1996, the value of VLE was 563 and the value of the TPX was 551.

In implementing the wider intervals, the PHLX would begin listing exercise prices at the wider interval following the expiration after Commission approval, only listing the exercise prices required by the proposal. For example, under its current rules, the Exchange would have listed the new fifth month series of options on the PHLX/Keefe Bruyette & Woods Bank Index (''KBW'') at $5 intervals from 335 to 400), totalling 14 exercise prices; under the proposal, the Exchange would list the new fifth month series at $25 intervals, thereby listing only three additional exercise prices (350, 375, and 400).[7]

At the subsequent quarterly expiration, when new five-month and long-term options are listed, new series would then be listed at the wider intervals. If the proposal is approved and implemented in January, the far-term series (*i.e.,* September) is already listed at existing intervals, which would be delisted if no open interest exists. Complete implementation of the proposal would begin at the next quarterly expiration in March, when the December series are listed. Upon implementation of the proposal, the Exchange will list far-term series at wider intervals until there are less than six months remaining until expiration, when intervening exercise prices will be listed at narrower intervals.[8]

The Exchange believes that listing higher-priced index options, far-term series and long-term options at wider intervals should improve the efficiency of quotation dissemination and speedy pricing by reducing the number of listed exercise prices. As discussed above, the immediate effect on the number of exercise prices in notable. Concomitantly, the effect on Exchange systems is likewise notable, with a reduction in system capacity and usage as well as operational burdens. For instance, exercise prices occupy trading floor screen space and line traffic to outside vendors for dissemination. Further, the role of the specialist in monitoring multitudes of exercise prices should be simplified.

With respect to operational burdens, the Exchange expects that reducing the number of exercise prices should also reduce the instances of wrap-around symbols.[9] The use of wrap-around symbols, although common, increases operational burdens, complicates screen displays and potentially confuses investors viewing vendor screens.

The Exchange believes that the proposal is an important contribution to the effort to limit the number of option exercise prices. In recently approving 2½ point exercise prices on a pilot basis for equity options, the Commission cited the need to balance an exchange's desire to accommodate market participation by offering a wide array of investment opportunities and the need to avoid proliferation of option series.[10] The Commission also cited this balance in approving PHLX Rule 1101A, Commentary .02, which permits $25 intervals in the far-term series of the XOC and VLE, noting that such intervals preserve key trading strategies while limiting the number of outstanding strike prices.[11] The PHLX believes that the proposal at hand achieves such a balance by reducing the number of exercise prices and, thus, the associated systems and operational burdens, yet retaining trading strategies and investment opportunities by listing wider intervals at reasonable intervals and permitting the flexibility to widen or narrow such intervals in response to investor requests or market conditions.

For these reasons, the Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by eliminating excessive strike prices, thereby improving quotation dissemination capabilities, while maintaining investors' flexibility to better tailor index option trading to meet their investment objectives.

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[7] The KBW example applies to fifth month series, rather than fourth month series. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on January 24, 1996.

[8] For example, because each quarter a far-term series with nine months until expiration is listed, after December expiration, a September option is listed. After March expiration, the September option is no longer the far-term series, as a December option is added, so that the intervening strike prices would be added to the December series.

[9] A wrap-around occurs when the strike price codes A–T indicating the strike price of an option (from 5 to 100) have been used and additional strike prices require listing the option with a different root symbol. For example, KBW October 310 calls use the symbol ''B'' to denote 310, but the 410 calls would also have used that symbol. Thus, the October 410 calls are traded under the symbol BKV JB.

[10] See Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (order approving File Nos. SR–PHLX–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–PSE–95–12).

[11] See Securities Exchange Act Release No. 33301 (December 8, 1993), 58 FR 65611 (December 15, 1993) (order approving File No. SR–PHLX–93–06).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[12] 17 CFR 200.30–3(a)(12) (1995).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2618 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6083]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Greenman Bros. Inc., Common Stock, $.10 Par Value)

February 1, 1996.

Greenman Bros. Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the America Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on November 16, 1995 to withdraw the Security from listing on the Amex and instead, to list the Security on the Nasdaq Stock Market as a Nasdaq National Market security (''NNM'').

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the NNM will be more beneficial to the Company's stockholders than the present listing on the Amex for the following reasons.

(1) The past six months have marked a rise in the price of and an increased interest in the Security, with the result that several brokerage houses are now actively following the Security; and

(2) The Company has been advised by securities industry professionals that the NNM should provide greater price stability for the Security and afford the Company's stockholders and the public a more stable trading market for the Security, a view with which the Company concurs.

Any interested person may, on or before February 22, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

secretary.

[FR Doc. 96–2543 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26467]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

February 1, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 26, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cinergy Corporation, et al. (70–8589)

Cinergy Corporation, a registered holding company (''Cinergy''), Cinergy Service, Inc., Cinergy's wholly owned subsidiary service company, both located at 139 East Fourth Street, Cincinnati, Ohio 45202, and Cinergy Investments, Inc. (''Investments''), Cinergy's wholly owned nonutility subsidiary company, located at 251 North Illinois Street, Suite 1410,

Indianapolis, Indiana 46204, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and rules 43, 45, 53 and 83 thereunder.

By order dated September 21, 1995 (HCAR No. 26376) (''Order''), the Commission authorized Cinergy and Investments, among other things, to: (1) Acquire the securities of one or more companies (''Special Purpose Subsidiaries'') formed to engage exclusively in the business of acquiring and holding the securities of, and/or providing services to, exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''); and (2) make direct and indirect investments in Special Purpose Subsidiaries up to an aggregate principal amount of $115 million (''Investment Limitation''), through May 31, 1998. However, any direct or indirect investment by Cinergy in any Special Purpose Subsidiary would be made only if, on a pro forma basis, Cinergy's aggregate investment in all EWGs, FUCOs and Special Purpose Subsidiaries would not exceed 50% of Cinergy's consolidated retained earnings, as defined in rule 53(a).

Applicants now propose to extend the authorization period established in the Order from May 31, 1998 to the earlier of December 31, 1999, or the effective date of any rule of general applicability adopted by the Commission that would exempt the proposed transaction from the applicable provisions of the Act.

In addition, Cinergy requests authority to make direct or indirect investments in Special Purpose Subsidiaries in an aggregate amount which, when added to Cinergy's aggregate investment in all EWGs, FUCOs and Special Purpose Subsidiaries, does not, at any point in time, exceed 50% of Cinergy's consolidated retained earnings, as defined in rule 53(a).

Consolidated Natural Gas Company, et al. (70–8667)

Consolidated Natural Gas Company (''Consolidated''), CNG Tower, a registered holding company, and its subsidiaries, Consolidated System LNG Company, CNG Research Company, CNG Financial Services, Inc. (''CNG Financial''), Consolidated Natural Gas Service Company, Inc., and The Peoples Natural Gas Company, each of CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222; CNG Coal Company, CNG Producing Company (''CNG Producing''), and CNG Pipeline Company, each of CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112; CNG Transmission Corporation and CNG Storage Service Company (''CNG Storage''), each of 445 West Main Street, Clarksburg, West Virginia 26301; CNG Power Company (''CNG Power''), CNG Market Center Services, Inc., CNG Products and Services, Inc. (''CNG Products''), and CNG Energy Services Corporation (''CNG Energy''), each of One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244; The East Ohio Gas Company (''East Ohio''), 1717 East Ninth Street, Cleveland, Ohio 44115; Virginia Natural Gas, Inc., 5100 East Virginia Beach Boulevard, Norfolk Virginia 23501; Hope Gas, Inc. (''Hope Gas''), P.O. Box 2868, Clarksburg, West Virginia 26302; and West Ohio Gas Company (''West Ohio''), 319 West Market Street, Lima, Ohio 45802 (collectively, the ''Applicants''), have filed an application-declaration under sections 6, 7, 9(a), 10, 12(b) and 12(e) of the Act and rules 43, 45, 54 and 62 thereunder. The Applicants seek authorization to engage in various financing and related transactions through March 31, 2001.[1] The authorization would be subject to the following conditions: (1) Consolidated's long-term debt must be rated investment grade by at least one nationally recognized statistical rating organization; (2) the effective cost of money for debt may not exceed 300 basis points over the interest rate on United States Treasury securities of a comparable term; (3) the effective cost of money for preferred stock and other fixed income securities may not exceed 500 basis points over the interest rate on 30-year United States Treasury securities; (4) the maturity of debt may not be more than 50 years; (5) issuance expenses in connection with an offering of securities, including any underwriting fees, commissions or other similar compensation, may not exceed 5% of the total amount of the securities being issued; (6) proceeds of the proposed financing may not be used to invest in an exempt wholesale generator or a foreign utility company; (7) at the time of each financing transaction, Consolidated must be in compliance with the requirements of rules 53 and 54 under the Act; and (8) proceeds of the proposed financing by the subsidiaries of Consolidated must be used only in connection with their respective existing businesses.[2] Any deviation from these conditions would require further Commission approval.

The proposed transactions and the proposed participation of the various Applicants are described below.

1. *External Financing by Consolidated.* Consolidated proposes to issue and sell common stock, preferred stock, short-term debt, long-term debt and other securities from time to time through March 31, 2001, provided that the aggregate amount of short-term and revolving debt outstanding at any one time and the aggregate amount of common stock, preferred stock, long-term debt and other securities issued during the period shall not exceed $7.0 billion.[3] Securities may be sold through underwriters or dealers, directly to a limited number of purchasers, or through agents. Consolidated also proposes to engage in interest rate and equity swaps from time to time through March 31, 2001.

a. *Short-term Debt.* Consolidated proposes to issue and sell commercial paper to dealers at the discount rate prevailing at the date of issuance for comparable commercial paper. The dealers would reoffer such commercial paper at a discount to investors. Consolidated also proposes to establish back-up lines of credit providing for borrowings from time to time when it is impracticable to issue commercial paper. Such lines of credit would be in an aggregate principal amount not to exceed the amount of authorized commercial paper, and borrowings under these lines would mature not more than one year from the date of borrowing. Consolidated also proposes to establish bank lines of credit and issue debt securities under its existing indenture and note programs.[4]

b. *Long-term Debt.* Consolidated proposes to issue and sell bonds, debentures, notes, convertible debt, medium term notes, and securities with call or put options, and to enter into

[1] This authorization would supersede the authorization granted in Holding Co. Act Release Nos. 25926 (Nov. 16, 1993) (relating to guarantees by Consolidated of obligations of CNG Energy); 26245 (March 6, 1995) (relating to issuance of debt securities by Consolidated); and 26321 (June 29, 1995) (relating to the Consolidated system's one-year financing plan).

[2] The Commission has published and solicited public comment on a proposed rule 58 under the Act that would permit registered holding companies and their subsidiaries to acquire securities of companies engaged in specified nonutility activities without prior Commission approval. Holding Co. Act Release No. 26313 (June 20, 1995), 60 FR 33642 (June 28, 1995). If rule 58 is adopted, the proceeds of the proposed financings could also be used for these purposes.

[3] This amount includes $3.5 billion of securities the proceeds of which may be used to retire outstanding securities and $3.5 billion of securities the proceeds of which will be used for other purposes. This amount excludes guarantees of subsidiary obligations (which are described below and are subject to a separate limitation).

[4] These programs are described in Holding Co. Act Release No. 26321 (June 29, 1995), which would be superseded by the authorization granted herein.

other bank debt arrangements. Long-term debt securities would have such designation, maturity, interest rate(s) (or methods of determining the same) and terms of payment, redemption provisions (including nonrefunding provisions), sinking fund terms, conversion provisions, put terms, and other terms and conditions as are determined at the time of issuance.

c. *Capital Stock.* Consolidated proposes to issue and sell preferred stock or common stock, including stock issued upon the exercise of convertible debt or pursuant to rights, options, warrants and similar securities, monthly income preferred stock and cumulative quarterly income preferred securities.[5] Any such preferred stock would have such designation, liquidation preferences, price, dividend rate(s) (or methods of determining the same) and terms of payment, redemption and sinking fund provisions (including nonrefunding provisions), voting or other special rights, conversion terms and other terms and conditions as may be determined at the time of issuance. Any such common stock sold by Consolidated may include shares that have been acquired through employee benefit and dividend reinvestment and stock purchase plans or otherwise and held as treasury shares.

3. *Interest Rate and Equity Swaps.* Consolidated proposes to engage in interest rate swaps involving its interest obligations existing at the date of the swap. Consolidated also proposes to engage in equity swaps in which it would exchange one equity investment market risk for another or would exchange fixed or floating rate interest income from an investment for payments based on a stock index.[6] Interest rate and equity swaps would be limited to obligations and investments existing at the time of the swap.

e. *Other Securities.* In addition to the specific securities for which authorization is sought, Consolidated also proposes to issue other types of securities that it deems appropriate during the period of the Commission's authorization. Consolidated requests that the Commission reserve jurisdiction over the issuance of additional types of securities. Consolidated also undertakes that it will file a post-effective amendment in this proceeding describing the general terms of each such security and obtain a supplemental order of the Commission authorizing the issuance thereof by Consolidated. Such supplemental orders may be issued by the Commission without further public notice in the Federal Register.

2. *Intrasystem Financing.* The Applicants propose various financing transactions between Consolidated and its subsidiaries and between certain subsidiaries and their respective subsidiaries.

a. *Transactions between Consolidated and its Subsidiaries.* Consolidated proposes to make open-account advances to East Ohio, Peoples, and West Ohio. These borrowings would be made on a revolving basis through the CNG System Money Pool,[7] and would bear interest at a rate equal to the weighted average effective interest rate of Consolidated's short-term borrowings or, if no such borrowings are outstanding, at a rate based on the Federal Funds effective rate of interest quoted daily by the Federal Reserve Bank of New York.

In addition, CNG Financial, CNG Producing, CNG Storage, CNG Power and CNG Energy also propose to issue and Consolidated proposes to acquire other types of securities that are not exempted by rule 52 from the requirement of Commission approval but that are considered by such companies to be approriate during the period of the Commissions authorization. These Applicants request that the Commission reserve jurisdiction over the issuance of additional types of securities and also undertake that they will cause a post-effective amendment to be filed in this proceeding describing the general terms of each such security and obtain a supplemental order of the Commission authorizing the issuance and acquisition thereof. Such supplemental orders may be issued by the Commission without further public notice in the Federal Register.

The aggregate amount of all such financing would not exceed $1.5 billion.

b. *Transactions between Certain Subsidiaries and their Subsidiaries.* Consolidated, CNG Energy and CNG Products have filed an application-declaration in File No. 70–8703, pursuant to which CNG Power and CNG Storage would become subsidiaries of CNG Energy. In the event such changes are authorized and occur, CNG Storage and CNG Power propose to issue and CNG Energy proposes to acquire other types of securities that are not exempted by rule 52 from the requirement of Commission approval but that are considered by these companies to be appropriate during the period of the Commission's authorization in this proceeding. These Applicants request that the Commission reserve jurisdiction over the issuance of additional types of securities, and also undertake that they will cause a post-effective amendment to be filed in this proceeding describing the general terms of each such security and obtain a supplemental order of the Commission authorizing the acquisition and issuance thereof. Such supplemental orders may be issued by the Commission without further public notice in the Federal Register.

c. *Guarantees.* Consolidated proposes to enter into guarantee arrangements, obtain letters of credit and otherwise provide credit support with respect to the obligations of the other Applicants to third parties. CNG Energy, CNG Power, CNG Storage, CNG Financial and CNG Producing also propose to enter into such arrangements with respect to the obligations of their respective subsidiaries. The aggregate amount of all such arrangements would not exceed $2.0 billion.

3. *External Financing by Subsidiaries.* CNG Energy, CNG Financial, CNG Power, CNG Producing, and CNG Storage seek authorization to issue to third parties monthly and quarterly income preferred securities.[8] In addition to the specific securities for which authorization is sought, these Applicants also propose to issue other types of securities that are not exempted by rule 52 from the requirement of Commission approval and that they deem appropriate during the period of the Commission's authorization. These Applicants request that the Commission reserve jurisdiction over the issuance of additional types of securities and also undertake that they will cause a post-effective amendment to be filed in this proceeding describing the general terms of each such security and obtain a supplemental order of the Commission authorizing the issuance thereof by such Applicants. Such supplemental orders may be issued by the Commission without further public notice in the Federal Register.

The aggregate amount of all such securities to be issued would not have a dollar limitation.

[5] In connection with issuance of such securities, Consolidated proposes to form financing entities, as described below, and to issue debt to such entities to back up obligations under securities issued by such entities. For purposes of determining the amount of authorization used by such transactions, such securities shall not be considered to be short-term debt.

[6] Consolidated states that equity swaps could be used to hedge earnings from its domestic or international investments, but would not be used to transfer title to the equity securities owned by it that are used in the swap transaction.

[7] The CNG System Money Pool arrangements were authorized in Holding Co. Act Release No. 24128 (June 12, 1986).

[8] In connection with issuance of such securities, these Applicants propose to form financing entities, as described below, and to issue debt or other securities to such entities to back up obligations under securities issued by such entities.

4. *Acquisition of Securities.* Consolidated seeks authorization to reacquire shares of any monthly or quarterly income preferred securities that may be issued pursuant to authorization in this proceeding. All of the other Applicants seek authorization to repurchase shares of their common stock and preferred stock from their parent companies. In each case, there is no limitation as to amount.

5. *Charter Amendments.* Consolidated proposes to amend its certificate of incorporation to increase its authorized common stock and to authorize a new class of preferred stock. Consolidated requests the Commission to reserve jurisdiction over the amendments to its certificate of incorporation pending completion of the record and filing of related documents under the Securities Exchange Act of 1934. One or more supplemental orders may be issued by the Commission authorizing such amendments without further public notice in the Federal Register. The Applicants, other than Consolidated, propose to increase the amount of their authorized common stock up to a maximum of twice the current authorized amount, and to change or eliminate the par value of such stock.

6. *Financing Entities.* In connection with the issuance of monthly and quarterly income preferred securities, Consolidated, CNG Energy, CNG Storage, CNG Power, CNG Producing, and CNG Financial seek authorization to organize new corporations, trusts, partnerships or other entities created for the purpose of facilitating such financings. Request is made for the acquisition by such Applicants of voting interests or equity securities issued by the financing entity to establish such Applicant's ownership of the financing entity (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, such as shares of stock or partnership interests, involving an amount usually ranging from 1–3% of the capitalization of the financing entity.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2616 Filed 2–6–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, March 4, 1996, from 9:00 a.m. to 4:00 p.m. at the U.S. Small Business Administration, 409 Third Street, S.W., 4th Floor, Washington, DC 20416.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or others present.

For further information, write or call Mary Ann Holl, SBA, 4th Floor, 409 3rd Street, S.W., Washington, DC 20416, (202) 205–7302.

Dated: February 1, 1996

Bill Combs,

Associate Administrator for Office of Communication and Public Liaison

[FR Doc. 96–2564 Filed 2–6–96; 8:45 am]

BILLING CODE 8025–01–P

First Capital Group of Texas II, L.P., Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

[Application No. 99000193]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1996)) by First Capital Group of Texas II, L.P. at 750 East Mulberry, Suite 305, San Antonio, Texas 78212 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder. The applicant will invest primarily in small business concerns located throughout Texas, however, investments in attractive situations outside of Texas will not be precluded. In addition to its principal office in San Antonio, Texas, the applicant is planning to establish a branch office in Austin, Texas.

First Capital Group Investment Partners, L.P., a Texas limited partnership, will serve as the General Partner of the Applicant. First Capital Group Management Company, L.C. (Investment Advisor/Manager), is the general partner of the General Partner and will manage the Applicant's operations. Jeffrey P. Blanchard, Wm. Ward Greenwood, and John J. Locy are the managers of the Investment Adviser/Manager and are responsible for the day-to-day management and operations of the applicant. These three investment professionals have over 50 years of combined experience in the management of venture capital investment partnerships and SBICs.

The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
International Bank of Commerce	28.8
Alamo Group Inc.	19.2

International Bank of Commerce has assets of approximately $2 billion and is the largest commercial banking organization on the Texas-Mexico border with operations in Laredo, Brownsville, Corpus Christi, Harlingen, McAllen, San Antonio, and a number of smaller cities throughout south Texas. The Alamo Group Inc. is a leading manufacturer of high quality, tractor mounted mowing and grounds maintenance equipment for governmental and agricultural end users.

The applicant will begin operations with Regulatory Capital of $10.3 million. Additional capital commitments are being sought in the expectation of bringing the aggregate private capital of the applicant to $20.5 million, including a $500,000 commitment from the General Partner. The applicant plans to invest in well-managed small businesses based in Texas in need of expansion capital that are engaged in a variety of industries having the potential for growth in earnings and equity value.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in San Antonio, Texas.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: Thursday, February 1, 1996.
Don A. Christensen,
Associate Administrator for Investment.
[FR Doc. 96–2565 Filed 2–6–96; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice No. 2323]

Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union; Notice of Meeting

The Department of State announces that the Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on April 26, 1996, beginning at 9:30 a.m. in Room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 1996 competition of the Program for Study of Eastern Europe and the Independent States of the Former Soviet Union in connection with the ''Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, as amended.'' The agenda will include: opening statements by the Chairman and members of the Committee and, within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the independent states of the former Soviet Union,'' based on the guidelines contained in the call for applications published in the Federal Register on November 27, 1995. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however, attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify Joanne Bramble, INR/RES, U.S. Department of State, (202) 736–4572, by April 19, 1996, providing their date of birth, Social Security number, and any requirements for special needs. All attendees must use the 2201 C Street, NW., entrance to the building. Visitors who arrive without prior notification and without a photo ID will not be admitted.

Dated: January 23, 1996.
Kenneth E. Roberts,
Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union.
[FR Doc. 96–2521 Filed 2–6–96; 8:45 am]
BILLING CODE 4710–32–M

[Public Notice No. 2328]

International Telecommunications Advisory Committee (ITAC) Ad Hoc on ITU Regional Development Conferences; Meeting Notice

The Department of State announces the first meeting of the United States International Telecommunications Advisory Committee (ITAC) Ad Hoc to prepare for Regional Development Conferences (RDCs) of the international Telecommunication Union (ITU). The meeting is scheduled for Wednesday, February 21, 10:00 a.m. to noon, Room 1107, Department of State, 2201 ''C'' Street, N.W., Washington, D.C.

The purpose of ITAC is to advise the Department on policy, technical and operations matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. To assist in preparations for related international meetings, the Department has established an ITAC Ad Hoc group to deal with preparations for upcoming RDCs of the ITU. Such conferences are now scheduled for the ITU Africa Region in Abidjan, Cote d'Ivoire, 6–10 May; and for the ITU middle East Region in Beirut, Lebanon, November 11–15.

The agenda for the meeting will cover how the U.S. will organize its preparations to address the three broad themes of the RDC: (1) Policies and Strategies; (2) Development of Networks; and (3) Financing. Questions regarding the agenda or Ad Hoc activities in general may be directed to Doreen McGirr, Department of State, at 202–647–5231.

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202–647–5957 not later than 2 days before the scheduled meting. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: February 5, 1996.
Richard E. Shrum,
ITAC Executive Director.
[FR Doc. 96–2737 Filed 2–6–96; 8:45 am]
BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Public Meeting on Launch Requirements and Future Space Transportation Needs for Low Earth Orbit Market Demands

Notice is hereby given that the Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (DOT) formerly the Office of Commercial Space Transportation (60 FR 62762, December 7, 1995), will convene a public meeting in order to collect information from interested parties that would assist in defining launch requirements and in projecting future space transportation needs to support Low Earth Orbit (LEO) market demands. The meeting will be held on February 20, 1996 at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, D.C., Room 4436 from 9:00 a.m. until 12:30 p.m.

The data and information gathered as a result of this meeting will be used to update prior studies of the LEO market that the Office released initially in March 1994 and updated in May 1995. Both the March 1994 release and the May 1995 update were completed on the basis of information collected at a public meeting on February 10, 1994, through written submittals to the Office and Office research. As before, the Office is undertaking the assessment in support of DOT's participation in various interagency working groups on space transportation and the efforts by the Office of the United States Trade Representative (USTR) to negotiate and monitor compliance with commercial space launch trade agreements between the U.S. and various countries with economies in transition offering commercial space launch services.

Specifically, the Office is interested in obtaining projections of the number of LEO payloads that will be launched between the years 1996–2005, as well as assessments of the types of services that may result from LEO satellites and their applications (e.g., remote sensing, mobile communications). The Office is also interested in obtaining short- and long-range projections of the potential revenues that may be generated by these

space-based systems. For purposes of this study, LEO should be considered to include Medium Earth Orbit (MEO) requirements as well (e.g., proposed communications satellite constellations in MEO).

In addition to the public meeting, written submissions may be provided by any interested party. Submissions designated as proprietary will be treated confidentially. Written submission should be provided as soon as possible, but no later than noon on February 27, 1996, to the Office of the Associate Administrator for Commercial Space Transportation, Room 5415, 400 Seventh Street, SW., Washington, DC 20590 or by fax to (202) 366–7256. Additional information may be obtained by contracting Patti Grace Smith at (202) 366–8960 or Richard W. Scott, Jr. at (202) 366–2936.

Dated: January 29, 1996.

Frank C. Weaver,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 96–2501 Filed 2–6–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link (HFDL); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Special Committee 188 meeting to be held March 12–15, 1996, starting at 9:30 a.m. on March 12. (On subsequent days, meeting begins at 9:00 a.m.) (March 12 will address the Opening Plenary and Working Group 1 MASPS; March 13 will continue Working Group 1 discussion; March 14 will address Working Group 2 MOPS; and March 15 will continue Working Group 2 and the Closing Plenary. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Presentations; (4) Adjourn to Working Group Sessions; (5) Reconvene in Plenary; (6) Reports from Working Groups 1 and 2: (7) Other Business; (8) Set Agenda for Next Meeting; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 1, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–2630 Filed 2–6–96; 8:45 am]

BILLING CODE 4810–13–M

Maritime Administration

[Docket S–931]

Mormac Marine Transport, Inc.; Notice of Application for Payment of Unused Operating-Differential Subsidy

On December 22, 1993, the Maritime Administrator permitted Mormac Marine Transport, Inc. (Mormac) to separate its Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–295 into three distinct contracts. Mormac would operate the MORMACSTAR under Contract MA/MSB–295(a), with a termination date of December 9, 1995; the MORMACSUN under Contract MA/MSB–295(b), with a termination date of June 22, 1996; and the MORMACSKY under Contract MA/MSB–295(c), with a termination date of January 31, 1997.

Mormac is currently requesting extension or renewal of Contract MA/MSB–295(a), which terminated on December 9, 1995, and Contract MA/MSB–295(b), which terminates on June 22, 1996, to permit the use of unused subsidy days through the termination of Contract MA/MSB–295(c) on January 31, 1997.

Mormac advises that it has more than 2,842 days of unused subsidy on Contracts MA/MSB–295(a), 295(b), and 295(c), which accrued prior to the termination of Contract MA/MSB–295(a) on December 9, 1995.

Mormac states that on September 14, 1995, the Maritime Subsidy Board approved Mormac's request to extend the subsidizable life of the MORMACSTAR and MORMACSUN to January 31, 1997, the termination date of MA/MSB–295(c) on the MORMACSKY. Mormac advises that approving its request to use unused subsidy days through this date would permit Mormac to receive the full benefit of subsidy for the entire subsidizable life of the vessels.

Mormac also states that extending the terms of the ODSAs to permit the use of unsubsidized days would permit continued operation of U.S.-flag vessels in the foreign trade and continued employment of U.S. seafarers. According to Mormac, the extension of the ODSAs is therefore consistent with the purposes and policies of the Merchant Marine Act, 1936, as amended.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington D.C. 20590. Comments must be received no later than 5:00 p.m. on February 21, 1996. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 2.804 Operating-Differential Subsidies)

Dated: February 1, 1996.

By Order of the Maritime Subsidy Board.

Joel C. Richard,

Secretary.

[FR Doc. 96–2586 Filed 2–6–96; 8:45 am]

BILLING CODE 4910–81–P

Surface Transportation Board [1]

[Docket No. AB–432X]

Delaware-Lackawanna Railroad Company, Inc.; Discontinuance Exemption; in Luzerne and Lackawanna Counties, PA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The discontinuance of trackage rights over certain lines in Luzerne and Lackawanna Counties, PA, by Delaware-Lackawanna Railroad Company, Inc., is exempted from the

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

prior approval requirements of 49 U.S.C. 10903–04, subject to standard employee protective conditions. The lines are as follows: (1) The Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6, at Rocky Glen, a distance of 2.1 miles; (2) the Avoca Industrial Track, between milepost 1.8, at No. 7 Junction, and milepost 6.5 at Avoca, a distance of 4.7 miles, including the connection with the track of Consolidated Rail Corporation between ''LB'' Junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea, and the connection with Delaware & Hudson Railway Company (D&H) in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles; (3) the West Pittston Running Track, between milepost 0.0, at West Pittston, and milepost 3.0, at Harding, a distance of 3.0 miles, and between milepost 186.4, at West Pittston, and milepost 194.4, in Kingston, a distance of 0.2 miles; (4) the Suscon Running Track, between milepost 154.5, at Suscon, and milepost 156.6, at Suscon, a distance of 2.1 miles; (5) the Wilkes-Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (6) the Nanticoke Industrial Track, between milepost 0.0, at Ashley, and milepost 2.6, at Central Scrap, a distance of 2.6 miles; (7) the Harry E. Breaker Spur, between milepost 0.1, at Maltby Junction, and milepost 0.5, a distance of 0.4 miles; (8) the APC line, between milepost 0.0 and milepost 0.6 in Wilkes-Barre, a distance of 0.6 miles; (9) the Brownsville Industrial Track, between milepost 0.0, at Hillside, and milepost 1.0, at Brownsville, a distance of 1.0 miles; (10) the Wilkes-Barre Industrial Track, between milepost 59.9, at Ferry Street, and milepost 62.9, at Wilkes-Barre, a distance of 3.0 miles; (11) the Pettibone Branch, between milepost 0.0 and milepost 0.759, at Dorranceton, a distance of 0.759 miles; (12) the Kingston Industrial Track, between milepost 142.7, at Pittston Junction, and Railroad Station 8594+58, a distance of 8.1 miles; (13) the D&H Wilkes-Barre Connector, from milepost A–208.08, Hudson Yard to Conyngham Avenue, City of Wilkes-Barre, a distance of about 2.5 miles; (14) the Hanover Industrial Track, between milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Park, a distance of 0.5 miles; and (15) the Suscon Industrial Track, between milepost 154.5, at Suscon, and milepost 158.7 at Hillside, a distance of 4.2 miles.

DATES: This exemption will be effective on March 8, 1996 unless stayed and provided no formal expression of intent to file an offer[2] of financial assistance has been received. Formal expressions of intent to file an offer[2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 19, 1996, petitions for stay must be filed by February 22, 1996, and petitions to reopen must be filed by March 4, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–432X to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: January 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Board Member Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–2627 Filed 2–6–96; 8:45 am]

BILLING CODE 4915–00–P

[Docket No. AB–398 (Sub-No. 2X)]

San Joaquin Valley Railroad Company; Abandonment Exemption; Kings County, CA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The abandonment by San Joaquin Valley Railroad Company of 8.25 miles of rail line extending between milepost 263.44 at Rossi and the end of the line at milepost 271.69 at Stratford, in Kings County, CA, is exempted from the prior approval requirements of 49 U.S.C. 10903–04, subject to environmental and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer[2] of financial assistance has been received, this exemption will be effective on March 8, 1996. Formal expressions of intent to file an offer[2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 19, 1996; petitions to stay must be filed by February 19, 1996; and petitions to reopen must be filed by February 27, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–398 (Sub-No. 2X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423, and (2) Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: January 11, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Board Member Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–2628 Filed 2–6–96; 8:45 am]

BILLING CODE 4915–00–P

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[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Federal Register

Wednesday
February 7, 1996

Part II

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 424

Proposed Policy on the Treatment of Intercrosses and Intercross Progeny (the Issue of ''Hybridization''); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

RIN 1018–AC54

Endangered and Threatened Wildlife and Plants; Proposed Policy and Proposed Rule on the Treatment of Intercrosses and Intercross Progeny (the Issue of ''Hybridization''); Request for Public Comment

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) propose a policy that will include, within the scope of a listing for a specific taxon, ''hybrid'' individuals that more closely resemble a parent belonging to a listed species than they resemble individuals intermediate between their listed and unlisted parents. The Services propose to add to their joint regulations the terms ''intercross'' and ''intercross progeny'' and indicate the inclusion of intercross individuals within the original listing action for the parent entity.

The proposed policy is intended to allow the Services to aid in the recovery of listed species by protecting and conserving intercross progeny, eliminating intercross progeny if their presence interferes with conservation efforts for a listed species, and fostering intercrossing when this would preserve remaining genetic material of a listed species. The proposed policy would only sanction these actions where recommended in an approved recovery plan, supported in an approved genetics management plan (which may or may not be part of an approved recovery plan), implemented in a scientifically controlled and approved manner, and undertaken to compensate for a loss of genetic viability in listed taxa that have been genetically isolated in the wild as a result of human activity. Nothing in this regulation would excuse compliance with section 10 of the Endangered Species Act.

DATES: Comments on this proposal must be received by April 8, 1996 in order to be considered in the final decision on this proposal.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, Mail Stop 452, Arlington Square, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, at the above Washington, D.C. address, (703/358–2106).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the Services to identify, protect, manage, and recover species of plants and animals in danger of extinction. To carry out this responsibility, the Services are required to rely on the best available scientific and commercial information and to develop sound policies to use that information in conserving endangered and threatened species and the ecosystems on which they depend. By implication, the Act also promotes protection of the genetic resources of those species.

Under the definition of ''species'' found in the Act, the Services can apply the protections of the Act to any species or subspecies of fish or wildlife or plants, or any distinct population segment of any species of vertebrate fish or wildlife that meets the definition of endangered or threatened. The Act does not attempt to define ''species'' in biological terms, and thus allows the term to be applied according to the best current biological knowledge and understanding of evolution, speciation, and genetics. While the Act does not specifically address reproductive isolation, the inclusion of subspecies and vertebrate population segments in its definition indicated that isolation is not considered absolutely essential for listing; however, it does not rule out using reproductive isolation as a consideration for listing. In the following discussion, the term ''species,'' unless qualified as indicating taxonomic species, is used in the sense of the Act to include species, subspecies, and distinct population segments of vertebrates within a taxonomic species.

Advances in scientific methodology have altered some traditional concepts of taxonomic species and hybridization. Molecular genetic studies (e.g., DNA analysis and protein electrophoresis) on both listed and unlisted plants and animals indicate that matings and genetic exchange between related taxonomic species may be more common events than previously believed.

Examples of introgression (the transfer of genetic material from one taxonomic species to another, and its spread among individuals of the second species) are found throughout the plant and animal kingdoms. In some cases, mating with other species and the resulting introgression have apparently been facilitated by a decline in the availability of conspecific mates. Given the low densities of many populations of rare threatened and endangered species, such introgression may be experienced by some listed species.

As a result of this information, the list of species that may contain genetic material traceable to other entities is growing. Consequently, questions have been raised as to how the Services can best deal with individual organisms and entire entities that may contain various levels of ''foreign'' genetic material.

Previous Service Position. The previous Fish and Wildlife Service position, based upon interpretations in a series of opinions by the U.S. Department of the Interior, Office of the Solicitor, tended to discourage conservation efforts under the authorities of the Act for ''hybrids'' between taxonomic species or subspecies and the progeny produced by such matings. However, advances in biological understanding discussed earlier prompted the withdrawal of those opinions on December 14, 1990. The reasons for this action are summarized in two sentences in that withdrawal memorandum (Memorandum from Assistant Solicitor for Fish and Wildlife, U.S. Department of the Interior, to Director, U.S. Fish and Wildlife Service, dated December 14, 1990)—''New scientific information concerning genetic introgression has convinced us that the rigid standards set out in those previous opinions should be revisited. In our view, the issue of 'hybrids' is more properly a biological issue than a legal one.'' This notice contains a proposed policy intended to replace previous positions held by the Services.

Intercross and Intercross Progeny Defined. Due to connotations attached to the various terms that are in general use for matings across taxonomic boundaries and for their products (e.g., cross, hybrid, intergrade, and interbreed), the Services propose to use the neutral term ''intercross'' for all crosses between individuals of different

species (taxonomic species, subspecies, and distinct population segments of vertebrates). (The use of the term ''intercross'' was proposed by Dr. John C. Avise at the May 29–30, 1991, meeting of the Captive Breeding Specialist Group, Species Survival Commission, International Union for the Conservation of Nature and Natural Resources.) The phrase ''intercross progeny'' will be used for descendants of intercross events.

The degree of genetic mixing possible from intercrosses spans a broad continuum. At one extreme are cases in which a small number of individuals of a species display evidence of introgression. Genetic material originating from another entity may remain as evidence of long past and/or infrequent matings with that other entity but may have little or no effect on the morphology and behavior of the organism. At the other extreme are individuals that exhibit morphology that is intermediate between that of the parent types, nuclear DNA showing strong affinities with both parent types, some degree of functional sterility, and/or an inability to ''breed true.'' Somewhere along this continuum there may be individuals that possess DNA from past intercrosses but in most other ways are representative of a single parental stock.

The Services have identified threatened and endangered species that appear to fall at various points along this continuum. Some listed species have been found to contain individuals that appear to be products of introgression; they appear to harbor mitochondrial DNA resulting from introgression, yet there is no morphological or behavioral evidence that introgression has occurred. An apparent example of this condition is the eastern U.S. population of the gray wolf. At the other extreme, the Services have recognized cases in which mixing has reached a point where the species intended for conservation under the Act no longer exists; remaining genetic material is irretrievably mixed with that of another species (e.g., the Amistad gambusia (*Gambusia amistadensis*), which was removed from the list of endangered species in 1987).

While evidence such as similarities in mitochondrial DNA among several entities generally supports findings of introgression, such data may also be explained by alternate hypotheses. One hypothesis that is particularly difficult to rule out involves the retention of common genetic markers from common ancestral stock. Some techniques used to examine mitochondrial DNA are based on comparisons of fragment lengths of DNA obtained from mitochondria. Differences or similarities in fragment lengths do not necessarily reflect differences or similarities in the genetic codes contained in the fragments.

As molecular genetic methodology advances, it is anticipated that evidence of low levels of introgression and genetic mixing will be commonly found among a variety of organisms. In some cases, all individuals of a species may be found to display low levels of introgression, yet are able to ''breed true.'' The Services find no compelling reason to abandon recovery efforts for recognized species (those whose members morphologically, ecologically, and behaviorally bear close resemblance to one another) due solely to evidence of low-level present or past introgression, even if apparent introgression appears to be geographically widespread.

Populations of plants and animals that are very small, or have gone through a past episode of small population size, may have lost much of their previous genetic variability. In extreme cases, which might be exemplified by the mainland population of the Torrey pine (*Pinus torreyana*) and the cheetah (*Acinonyx jubatus*), population genetic analyses seem to indicate that there is little genetic variation in the remaining population. When genetic variability falls to low levels a species may suffer from a diminished capability to respond to environmental changes and the increased potential for the adverse effects of inbreeding depression (e.g., decreased fertility and/or mating, reduced numbers and survival of offspring). These effects may be catastrophic for a threatened or endangered species, and actions may be necessary to increase genetic variability before the population suffers an irreversible decline.

Proposed Policy for Intercross Progeny. Where intercross progeny are produced as a result of a cross between an individual of a listed taxon and an individual of a taxon that is not listed, the Services believe the responsibility to conserve endangered and threatened species under the Act extends to those intercross progeny if (1) the progeny share the traits that characterize the taxon of the listed parent, and (2) the progeny more closely resemble the listed parent's taxon than an entity intermediate between it and the other known or suspected non-listed parental stock. The best biological information available, including morphometric, ecological, behavioral, genetic, phylogenetic, and/or biochemical data, can be used in this determination.

This policy will not prohibit the Services from removing intercross progeny from the wild if it is determined that those individuals must be removed to enhance the survival or recovery of the listed species. The action may be authorized under 50 CFR 17.22, 17.32, 17.62, or 17.72, or the protection of the Act may be removed by a special rule adopted under section 4(d) of the Act for threatened species.

Intercrosses between subspecies of the same taxonomic species, or between members of different vertebrate populations of the same taxonomic species or subspecies, are a common, natural, and expected occurrence in nature wherever ranges are adjacent or overlap. As with other intercrosses, the Services will treat the resulting progeny as members of the listed subspecies or population if they share the characteristic traits of that entity. This determination will be based upon the best biological information available.

Species of Hybrid Origin. Some taxonomic species have originated through the intercrossing of two or more other taxonomic species, but have since become stable and self-sustaining biological units. This process of speciation by hybridization is well documented among plants and also is known among fishes, amphibians, and reptiles. Species that are believed to be of hybrid origin would retain or maintain eligibility for threatened or endangered status if they have developed outside of confinement, are self-sustaining, naturally occurring taxonomic species, and meet the criteria for threatened or endangered species under the Act.

Intercross Progeny Produced in Captivity. Unnatural conditions of confinement or confining environments resulting from human activities may produce behavioral and other anomalies that lead to intercrosses that rarely, if ever, occur under ''natural'' conditions. Resulting intercross progeny are unlikely to benefit the conservation of their listed parent's taxon, and the Services would not generally consider such progeny to be members of a species protected under the Act. However, this proposed policy would extend protection under the Act to intercross progeny produced in captivity, with or without introduction to the wild, where the action is (1) recommended by an approved recovery plan, (2) supported in an approved genetics management plan (which may or may not be part of an approved recovery plan), (3) implemented in a scientifically controlled and approved manner, and

(4) undertaken to compensate for a loss of genetic viability in listed taxa that have been genetically isolated in the wild as a result of human activity. Protection under the Act may apply to the individuals while they are in confinement, after their release to the wild, or during both periods.

Goals of the Proposed Policy. The primary goal of this proposed policy is to provide the Services with the necessary flexibility to deal with diverse intercross situations to allow for the protection and conservation of intercross progeny at the level of taxonomic species, subspecies, and vertebrate populations. A second goal is to give the Services the ability to eliminate intercross progeny if their presence interferes with conservation efforts for a listed species. Alternately, it gives the Services the option to foster intercrossing where required for conservation. Because an action that would eliminate or introduce genetic material from or to a listed species must be an informed decision by experts, the Services will adopt the strongest administrative controls over such actions. Prior to implementing any action to introduce genetic material, it must be (1) recommended in an approved recovery plan, (2) supported in an approved genetics management plan (which may or may not be part of an approved recovery plan), and (3) undertaken to compensate for a loss of genetic viability in listed taxa that have been genetically isolated in the wild as a result of human activity. Further, it must be implemented in a scientifically controlled and approved manner.

This proposed rule and policy would provide several conservation benefits to species currently listed as threatened or endangered. First, it would remove the necessity for the Services to devote substantial resources to studies to determine which listed species and individuals are genetically ''pure.'' Such studies, if required, would need to be extensive; it is not presently possible to accurately predict which species and individuals have experienced introgression and to what extent. Furthermore, even if such studies were to be carried out, the interpretation of the resultant data might be ambiguous considering the limits of current technology and incomplete understanding of the mechanisms of speciation.

Second, this proposed policy would acknowledge the Services' authority to conduct conservation programs for species that meet the listing criteria of Section 4(a)(1) of the Act, even though limited introgression may have taken place.

Third, where determined to be advantageous to recovery and where addressed in an approved recovery plan, the proposed policy acknowledges the Services' ability to use intercrossing to introduce small amounts of new genetic material from a closely related entity into a listed species that is genetically depauperate. The progeny of such an intercross, if they share characteristic traits of the listed species and more closely resemble it than an entity intermediate between the parents, would be fully protected by the Act. Such drastic steps are expected to be taken only rarely, and it is not the intent of this proposed policy to generally encourage the transfer of genetic material from one species to another.

Fourth, by generally excluding (where neither recommended in an approved recovery plan nor meeting the other tests set forth in this proposed policy) captive-propagated intercross progeny from the protection of the Act, the Services retain the ability to readily remove from the wild any such organisms that have been released or have escaped. Such releases or escapes may threaten existing or future recovery efforts by introducing genetic material into a listed species in the absence of a comprehensive evaluation of the likely impacts.

This proposed policy is not expected to affect current listing policy, nor will it result in adding species to the list. Several species suspected or known to be of hybrid origin (predominantly plants) are currently on the endangered and threatened species list (e.g., Arizona agave (*Agave arizonica*) and Mohr's Barbara's buttons (*Marshallia mohrii*)), and protection under the Act of additional species of this nature will be consistent with this proposed policy. Such species have established themselves as self-sustaining, genetically and morphologically, stable units that continue to be recognized as taxonomic species by the scientific community. The proposed policy would not affect the Services' existing treatment of these and similar species.

Except as noted in the preceding paragraph, this proposed policy would not allow the protection of the Act to be extended to a ''classical hybrid,'' that is, an intermediate organism AB that has received half its characteristics from an unlisted parent species A and half from a listed parent species B. The offspring AB does not sufficiently resemble B to warrant protection under the Act. However, all intercross (including backcross) progeny that more closely resemble B than they resemble AB would continue to be protected by the Act (consistent with past practice). However, where produced under conditions of captivity or confinement, such intercross progeny would be protected if the intercross was recommended in an approved recovery plan and satisfied other requirements set forth in this proposed policy.

The intentional intercrossing of species under confinement and the artificial transfer of genetic material from one taxonomic species into another (i.e., transgenics) are large and growing endeavors. This proposed policy would not include (would not protect) any individual organism resulting from these activities when they are performed under conditions that confine the progeny of the parents, even temporarily, unless the action is recommended in an approved recovery plan and satisfies other requirements set forth in this policy. The production and commercialization of hybrid organisms for the pet trade, falconry, horticulture, agriculture, and aquaculture or sport fishing purposes will not otherwise be affected by this proposed policy. Likewise, organisms resulting from genetic engineering experiments that use genetic material from listed species will not otherwise be covered by this proposed policy (although endangered species permits may be required to obtain the genetic material), unless such organisms are produced for the purpose of recovery of the listed species in accordance with an approved recovery plan. Private citizens or organizations that possess plants or animals of such origin would not normally be required to obtain additional Federal permits as a result of this proposed policy.

This proposed policy is intended to assist the Services in conserving endangered and threatened species and their unique genetic complements even if all individuals of a listed species have small amounts of genetic material from another species. However, this proposed policy is not intended to provide general support for, or preclude the establishment of, ''ecologically equivalent forms'' in habitats formerly occupied by threatened or endangered species. Ecologically equivalent forms are taxonomic species, subspecies, or populations that are used as replacements for extirpated or extinct species in order to maintain an apparently stable and complete plant and animal community.

Juvenile specimens of intercrosses of a listed species and an unlisted species may be indistinguishable from the unlisted species using traditional field procedures. In such a case, it would be impossible under field conditions to properly classify the juvenile stage of a possible intercross. For this reason, all

individuals that resemble a protected species should be protected until they have reached a life stage at which they can be distinguished from the listed species. The law enforcement implications of this policy are that because of similarity of appearance, taking of these individuals would be prohibited since they cannot be readily distinguished in the field from a listed species.

Public Comments Solicited

The Services intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

Regulatory Flexibility Act and Executive Order 12866

The Department of the Interior has determined that the proposed revisions to part 424 will not constitute a significant rule under Executive Order 12866 and certify that these changes will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this proposed rule, it is not expected that significant economic impacts would result. Also, no direct costs, enforcement costs, information collection, or record keeping requirements are imposed on small entities by this proposed rule. Further, the proposed rule contains no information collection or record-keeping requirements as defined by the Paperwork Reduction Act of 1995.

National Environmental Policy Act of 1969 (NEPA)

The Services believe that this action may be categorically excluded under the Services' NEPA procedures. (See 516 DM 2 Appendix I Categorical Exclusion 1.10.) After further review, the Services will decide whether an Environmental Assessment must be prepared.

Editors: The editors of this proposal are William Kramer of the Fish and Wildlife Service's Division of Endangered Species, 452 ARLSQ, Washington, D.C. 20240 (703/358–2106); and Marta Nammack, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (301/713–2322).

List of Subjects in 50 CFR Part 424

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Services hereby propose to amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 424—[AMENDED]

1. The authority citation for part 424 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed that § 424.02 be amended by redesignating paragraphs (f) through (n) as paragraphs (h) through (p) respectively, and adding new paragraphs (f) and (g) to read as follows:

§ 424.02. Definitions.

* * * * *

(f) *Intercross* means any mating, fertilization, or other means of exchange of genetic material between different species, subspecies, or distinct vertebrate population segments within a taxonomic species.

(g) *Intercross progeny* means any and all offspring and descendants that are the product of an intercross.

* * * * *

3. It is proposed that a new § 424.03 be added to subpart A to read as follows:

§ 424.03 Intercross and intercross progeny.

(a) Unless specified otherwise and indicated by an annotation in the ''Scientific name'' column, any species listed as endangered or threatened pursuant to the Act will include all individuals that, considering the sum of available morphological, behavioral, ecological, biochemical, genetic, and other relevant data, more closely resemble such listed species than they resemble an intermediate between their listed and unlisted parents.

(b) Individuals that are the products of intercrosses that occurred under conditions of confinement will be excepted from the inclusion in paragraph (a) of this section unless such production is:

(1) Recommended in an approved recovery plan for a listed parent species;

(2) Supported in an approved genetics management plan (which may or may not be part of an approved recovery plan);

(3) Implemented in a scientifically controlled and approved manner; and

(4) Undertaken to compensate for a loss of genetic viability in listed taxa that have been genetically isolated in the wild as a result of human activity.

Dated: February 1, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Dated: February 2, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–2640 Filed 2–6–96; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday
February 7, 1996

Part III

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Draft Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act; Request for Public Comment; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act; Request for Public Comment

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Draft policy; request for public comments.

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), referred to jointly as the ''Services'', propose to issue policy that will address the role of controlled propagation in the conservation and recovery of species listed as endangered or threatened under the Endangered Species Act of 1973 (as amended) (16 U.S.C. 1531 *et seq.*) (ESA). The proposed policy is intended to assist the Services by providing guidance and establishing consistency with respect to activities in which the controlled propagation of a listed species may be implemented as a component of a species' recovery strategy, ensuring smooth transitions between various phases of species conservation efforts within both agencies, and ensuring prudent and effective use of limited funding resources. The proposed policy sanctions the controlled propagation of listed species when recommended in an approved recovery plan and supported by an approved genetics management plan. Controlled propagation may also be approved by FWS's Regional Directors, or, in the case of the NMFS, by the Assistant Administrator as necessary, to conduct recovery related research, to maintain refugia populations, and to rescue species or population segments at risk of imminent extinction or extirpation in order to prevent the loss of essential genetic viability.

DATES: Comments on this proposed policy must be received by April 8, 1996, in order to be considered in the final decision on this proposal.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (telephone 703/358–2171). Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2105).

FOR FURTHER INFORMATION CONTACT: LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service at the above address (703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), specifically charges the Services with the responsibility for identification, protection, management, and recovery of species of plants and animals in danger of extinction. By implication, the ESA also promotes the protection and conservation of the genetic resources that these species represent and recognizes that the long-term viability of species depends on maintaining genetic variability within the biological species which is defined in the ESA as including ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (section 3(16)). Though the ESA emphasizes the restoration of listed species in their natural habitats, section 3(3) of the ESA specifically recognizes propagation as a tool available to the Services to meet their recovery responsibilities. To meet their goals of restoring endangered and threatened animals and plants, the Services are obligated to develop sound policies based on the best available scientific and commercial information. To achieve this goal the Services are soliciting review and comments from the public on the Draft Interagency Cooperative Policy for Controlled Propagation of Species Listed Under the Endangered Species Act of 1973 (as amended).

Draft Policy Statement

A. Purpose

The purpose of this policy is: (1) To provide guidance and establish consistency with respect to U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) activities in which the controlled propagation of a listed species, as defined in section 3(16) of the Endangered Species Act, is implemented as a component of a species' recovery strategy; (2) to ensure smooth transitions between various phases of species conservation efforts (e.g., propagation, introduction, and monitoring) within both agencies (hereafter referred to as Services when addressed jointly); and (3) to ensure prudent use of limited funding resources.

The purposes of controlled propagation under this policy include:

—Avoiding listed species, subspecies, or population extinction;

—Providing, when feasible, unlisted animals or plants as surrogates for recovery oriented scientific research including, but not restricted to, developing propagation methods and technology, and other actions which are expected to result in a net benefit to the listed species;

—Maintaining genetic vigor, diversity, bloodlines, and an appropriate mix of sexes and ages;

—Maintaining refugia populations for nearly extinct animals or plants on a temporary basis until threats to a listed species' habitat are alleviated, or necessary habitat modifications are completed, or when potentially catastrophic events occur (e.g., chemical spills, severe storms, fires, etc.);

—Providing individuals for establishment of new, self-sustaining populations necessary for recovery of the listed species;

—Supplementing or enhancing extant populations to facilitate recovery of the listed species;

—Holding offspring for a substantial portion of their development or through a significant or critical life-stage which cannot be supported in the wild.

B. Scope

This policy applies to all pertinent organizational elements of the Services notwithstanding those differences in administrative procedures and policies as noted. This policy pertains to all efforts funded, authorized, or carried out by the Services that are conducted to propagate threatened or endangered species by:

—Establishing or maintaining refugia populations;

—Producing individuals for research or technology development;

—Producing individuals for the supplementation of extant populations; and,

—Producing individuals for reintroduction to historical habitat.

C. Background

The controlled propagation of animals and plants is recognized in certain situations as an essential tool for the conservation and recovery of listed species. The Services have used controlled propagation to support the recovery of listed species and successfully return them to suitable habitat. The NMFS, as lead Service for the recovery of Pacific salmon, has developed an interim policy addressing controlled propagation of these species. This policy was published in the Federal Register on April 5, 1993 (58 FR 17573).

Though controlled propagation has a supportive role in the recovery of some listed species, the Endangered Species Act clearly states that its intent is ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Therefore, the mandate of the Services is to recover wild populations in situ whenever possible.

The Services recognize that there are a number of genetic and ecological risks which may be associated with the controlled propagation and release of animals and plants. When considering controlled propagation as a recovery option for a listed species, an assessment of the potential benefits and risks must be undertaken and reasonable alternatives requiring less intervention objectively evaluated. If controlled propagation is to be used as a strategy in the recovery of a listed species, it must be conducted in a manner that will minimize risks to existing populations (if any), and preserve the genetic and ecological distinctiveness of the listed species. However, controlled propagation is not a substitute for addressing factors responsible for an endangered or threatened species' decline.

Controlled propagation can pose a number of genetic and ecological risks to listed species. Specific risks which must be addressed in the planning of controlled propagation programs include the following:

—Removal of natural broodstock that may result in an increased risk of extinction by reducing the abundance of wild individuals and reducing genetic variability within naturally occurring populations;
—Equipment failures, human error, disease, and other potential catastrophic events that may cause the loss of some or all of the population being held or maintained in captivity;
—The potential for an increased level of inbreeding or other adverse genetic effects within populations that may result from the enhancement of only a portion of the gene pool;
—Potential erosion of genetic differences between populations as a result of mixed stock transfers or supplementation; and,
—Exposure to novel selection regimes in controlled environments that may diminish a listed species' natural capacity to survive and reproduce in the wild.

Potential genetic and ecological risks are also associated with introductions of captively-reared individuals to naturally occurring populations. Possible impacts may include:

—Genetic introgression which may diminish local adaptations of the naturally occurring population;
—Increased predation, competition for food, space, mates, or other factors which may displace naturally occurring individuals, or interfere with foraging, migratory, reproductive, or other essential behaviors; and,
—Disease transfer.

An additional risk specific to naturally occurring populations of some listed species is incidental take through commercial and recreational harvest. This is particularly true when listed species occur with unlisted target species. It is therefore essential that controlled propagation programs for listed species recovery be coordinated in a manner that minimizes potentially adverse impacts to existing wild populations of listed species, and that controlled propagation programs be conducted by the Services in a manner that avoids additional listing actions.

D. Definitions

The following definitions apply:

Controlled Environment

A controlled environment is one specifically manipulated by humans for the purpose of producing or rearing progeny of the species in question, and of a design intended to prevent unplanned escape or entry of plants, animals, or reproductive products.

Intercross and Intercross Progeny

The term ''intercross'' is applicable to all crosses between individuals of different species, subspecies, or populations. The following description is excerpted from the Services' proposed Policy on the Treatment of Intercrosses, Intercross Progeny to Include Hybrids, and Proposed Definitions.

The degree of genetic mixing possible from intercrosses spans a broad continuum. At one extreme are cases in which a small number of individuals of a species display evidence of introgression. Genetic material originating from another entity may remain as evidence of long past and/or infrequent matings with that other entity but may have little or no effect on the morphology and behavior of the organism. At the other extreme are individuals that exhibit morphology that is intermediate between that of the parent types, nuclear DNA showing strong affinities with both parent types, some degree of functional sterility, and/or an inability to ''breed true.'' Somewhere along this continuum there may be individuals that possess DNA from past intercrosses but in most other ways are representative of a single parental stock.

Controlled Propagation

The mating, transfer of gametes or embryos, development of offspring, and grow-out of animals, if reproduction is sexual, or other development of offspring, including grow-out if reproduction is asexual, when intentionally confined or directly intended by human intervention.

—Propagation of plants by humans from seeds, spores, callus tissue, divisions, cuttings or other plant tissue in a controlled environment or when intentionally confined.
—Defined in the context of this policy, controlled propagation refers to the production of individuals, generally within a managed environment for the purpose of future supplementation or augmentation of an extant population(s), or reintroduction to the wild (with the exception of the establishment of an experimental population, which is excluded from this policy).

Rescue/Salvage

Refers to extreme conditions wherein a species or population segment at risk of extinction is brought into a controlled environment (e.g., refugia) on a temporary or permanent basis as dictated by the situation.

Recovery Priority System

The system whereby the Services assign priorities to listed species and to recovery tasks. Recovery priority is based on the degree of threat, recovery potential, taxonomic distinctness, and presence of an actual or imminent conflict between the species' conservation and development or other economic activities. (48 FR 43098, Endangered and Threatened Species Listing and Recovery Priority Guidelines, September 21, 1983.)

E. Policy

This policy is intended to address primarily those activities involving gamete transfer and subsequent development and grow-out of offspring in laboratory, botanical facility, zoo, hatchery, aquaria, or similarly controlled environments. This policy also encompasses activities related to or preceding controlled propagation activities such as:

—Obtaining and rearing offspring for research;
—Procuring broodstock for future controlled propagation and supplementation efforts; or,
—Holding offspring for a substantial portion of their development or through a significant or critical life-stage which cannot be supported in the wild.

This policy is not intended to address temporary removal and holding of individuals unless such actions intentionally involve reproduction in the interim, or are the result of an action deemed necessary to the survival of the listed species or a specific population (such circumstances are addressed under rescue and/or salvage). This policy is not intended to address short-term holding or captive rearing of individuals obtained for later reintroduction, supplementation, or translocation efforts when controlled propagation does not take place or is not intended during the period of captive maintenance. Actions involving cryopreservation or other preservation of biological materials, if not intended for subsequent use in the controlled propagation of listed species, are exempt from this policy.

Among the goals of this policy common to both Services are coordinating recovery actions specific to controlled propagation activities; maximizing benefits to the listed species from controlled propagation efforts; assuring that appropriate recovery measures other than controlled propagation are fully considered and that other existing recovery priorities within Service regions and nationwide are considered in decisions concerning the implementation or conduct of controlled propagation activities; and, ensuring prudent use of limited funds.

It is the policy of the Services that the controlled propagation of threatened and endangered species:

1. Will be used as a recovery strategy only when other measures employed to maintain or improve a listed species' status in the wild have failed, are determined to be likely to fail, are shown to be ineffective in overcoming extant factors limiting recovery, or would be insufficient to ensure/achieve full recovery. Every effort should be made to accomplish conservation measures that enable a listed species to recover in the wild, with or without intervention (e.g., translocation), prior to implementing controlled propagation for reintroduction or supplementation.

Controlled propagation programs must be coordinated with conservation actions and other recovery measures, as appropriate or specified in recovery plans, that will contribute to, or otherwise support, the provision of secure and suitable habitat. Specifically, controlled propagation programs intended for reintroduction or supplementation (as opposed to the support of research and technology development) must be coordinated with habitat management, restoration, and other species' recovery efforts. Controlled propagation programs and habitat conservation actions will be reviewed by the appropriate Service at least annually, to insure that the efforts of the parties involved in the recovery of the listed species maintain adequate integration and coordination.

2. Will be based on the specific recommendations of recovery strategies identified through approved recovery plans. The recovery plan, in addressing controlled propagation, should clearly identify the necessity and role of this activity as a recovery strategy; the lead agency responsible for a particular controlled propagation effort including the role of FWS or NMFS facilities, personnel, and resources, or those of non-Service cooperators as appropriate (e.g., Center for Plant Conservation (CPC), American Association of Zoological Parks and Aquaria (AZA); and, the estimated cost and duration of controlled propagation efforts.

3. Will specifically consider the potential ecological and genetic effects on wild populations of the removal of individuals for controlled propagation purposes and the potential effects of such introductions on the receiving population and other resident species [risk assessment] (e.g., Endangered Species Act—section 7, Endangered Species Act section 10, NEPA).

4. Will be based on sound scientific principles to conserve genetic variation and species integrity. Intercrossing will not be considered for use in controlled propagation programs unless (1) recommended by an approved recovery plan, (2) supported in an approved genetic management plan (which may or may not be part of an approved recovery plan), (3) implemented in a scientifically controlled and approved manner, and (4) undertaken to compensate for a loss of genetic viability in listed taxa that have been genetically isolated in the wild as a result of human activity. Use of intercross individuals for species conservation will require Director's/Assistant Administrator's approval.

5. Will be preceded by the development of a genetics management plan based on accepted scientific principles and procedures. This plan will: Include all necessary consultations and permits; use or be comparable to existing standards (e.g., AZA Species Survival Program studbooks and protocols for animals, or CPC guidelines for plant species); insure that the genetic makeup of propagated individuals is similar to that of free-ranging populations and that propagated individuals are behaviorally and physiologically suitable for release [1] and, specifically address the issue of disposal of individuals found to be:

(a) Unfit for introduction to the wild
(b) Unfit to serve as broodstock
(c) Surplus to the needs of research; [2] or
(d) surplus to the recovery needs for the species (e.g., to preclude genetic and ecological swamping); [3]

Programs involving the controlled propagation of individuals of listed species for research purposes and not intended for reintroduction to the wild are exempt from the requirement to develop a genetics management plan. Examples of exempt actions include research involving the determination of germination rates in plants and spawning success rates in fishes and mussels.

6. Will be conducted in a manner that minimizes potential introduction or spread of diseases and parasites into controlled or suitable habitat.

7. Will be conducted in a manner that will prevent the escape or introduction of captive stock outside their historic range.

8. Will, when feasible, be conducted at more than one location in order to reduce the potential for catastrophic loss at a single facility.

9. Will be coordinated as appropriate with organizations and investigators both within and outside the Services. The Services will cooperate with other Federal, State, Tribal, and local governments.

10. Will be conducted in a manner consistent with meeting the information needs of the Services and other institutions including AZA Species Survival Program and the International Union for the Conservation of Nature's International Species Information System as appropriate. In the case of listed species for which traditional studbooks or registrations are not

practical, records of eggs and larvae, or other life-stages will be maintained. Plant propagation programs and recordkeeping will be coordinated as appropriate with the CPC.

11. Will, with limited exceptions, be implemented only after a commitment to funding is secured following approval of final recovery plans and genetics management plans.

12. Will, prior to releases of propagated individuals, require development of a controlled propagation/reintroduction plan. This document may be produced separately or in combination with a recovery plan. However, the specific elements of the controlled propagation/reintroduction plan must be clearly identifiable. Controlled propagation/reintroduction plans will identify measurable objectives and milestones for the proposed propagation/reintroduction effort. The controlled propagation/reintroduction plan should be based on strategies identified in the approved recovery plan, and it is strongly recommended that it include protocols for health management, disease-free certification, monitoring and evaluation of genetic, demographic, life-history, phenotypic, and behavioral characteristics, data collection, recordkeeping, and reporting. On implementation of controlled propagation, annual evaluations must be made to assess project objectives, evaluate progress, and consider new scientific information and the status of any ongoing habitat conservation efforts. This annual evaluation will be provided to the Director/Assistant Administrator by the Regional Director with lead recovery responsibility.

13. Will be conducted in accordance with the regulations implementing the Endangered Species Act, Marine Mammal Protection Act, Animal Welfare Act, Lacey Act, Fish and Wildlife Act of 1956, and Departmental and Service procedures relative to the National Environmental Policy Act.

F. Exceptions

Few exceptions to the above policy guidelines will be considered and will require specific Regional Director/Assistant Administrator's approval. The following circumstances have been anticipated and are considered potential exceptions to the general policy guidelines.

1. In those instances where a listed species has an ephemeral reproductive stage or very short (1–2 year) life span that necessitates controlled propagation for the listed species' maintenance in refugia or for purposes of required research, exceptions may be granted by the Regional Director/Assistant Administrator.

2. In the absence of an approved recovery plan, and only in cases of a defensible immediate need, information or recommendations contained in recovery outlines or draft recovery plans may be used to identify controlled propagation as a necessary recovery measure for listed species in critical peril. Under such circumstances initiation of controlled propagation activities will require Regional Director's/Assistant Administrator's approval.

3. Programs in which candidate or proposed species are being held in refugia, used for research, or under controlled propagation and which are subsequently listed, are granted temporary exception to the requirements of this policy and activities may be continued at their present level unless directed otherwise by the Regional Director/Assistant Administrator. No change in program activities will be made without approval of the Regional Director/Assistant Administrator and until such time as the requirements of this policy are met. Conformance to this policy for candidate and proposed species which become listed subsequent to the implementation of this policy is required within 12 months following listing.

4. Any additional exceptions for unforeseen circumstances which are not specifically addressed by this policy will require the approval of the Director/Assistant Administrator.

G. Cooperators

The Services recognize the need for partnerships with other Federal agencies, States, Tribes, local governments, and private entities in the recovery of listed species. In this regard the Services will seek to develop partnerships with qualified cooperators for the purpose of propagating listed, proposed, and candidate species (as authorized under Sections 6 and 2(a)(5) of the Endangered Species Act). Guidance for this activity is as follows:

1. The Regional Directors/Assistant Administrator will explore opportunities for accomplishing controlled propagation and any associated research tasks with other Federal cooperators, FWS/NMFS facilities, State agencies, Tribes, zoological parks, aquaria, botanical gardens, academia, and other qualified parties. Cooperators will be selected on the basis of scientific merits, technical capability, willingness to adhere to the Services' policies, guidance, and protocols, and cost-effectiveness (e.g., willingness of non-agency cooperators to assume or share costs). State and private cooperators will be required to submit, either independently or in concert with the appropriate lead agency (FWS or NMFS), a genetics management plan for new species propagation efforts (as specified in E–5). Likewise, a controlled propagation/reintroduction plan will also be required of cooperators as and when appropriate (as specified in E–12).

2. The Regional Director/Assistant Administrator of the appropriate listed species lead agency will be responsible for assigning staff to oversee programs conducted by all cooperators to ensure adherence to necessary protocols and permit conditions and to coordinate annual reporting requirements.

3. The listed species' lead Region will be responsible for funding maintenance in refugia, controlled propagation research, and controlled propagation/reintroduction efforts unless this responsibility is assumed by a cooperating facility.

4. The Regional Director/Assistant Administrator will be responsible for ensuring Cooperator's compliance with this policy.

H. Responsibilities

This policy shall be implemented in accordance with the following guidelines:

1. Regional Directors/Assistant Administrator are responsible for recovery of listed species for which they have lead. Recovery actions for which Regional Directors/Assistant Administrator have authority include establishment of refugia, initiation of necessary research or technology development, and implementation of controlled propagation programs and/or propagation research for listed species. When determining species priority for inclusion in controlled propagation programs, considerations should include the following:

(a) Whether or not a listed species' recovery plan outline, draft recovery plan, or final recovery plan, identifies controlled propagation as an appropriate recovery strategy and what priority this task is assigned within the overall recovery strategy.

(b) The potential a species' overall recovery program, including controlled propagation, has to enhance the conservation of other listed or candidate species.

(c) The availability and willingness of non-agency cooperators to assume the lead or to contribute to recovery activities including cost sharing.

(d) Exceptions to the general guidance of this policy may be made if a critically

diminished listed species is threatened by imminent extinction or population extirpation due to temporary or uncontrollable causes, and therefore, in the Regional Director's/Assistant Administrator's judgment, warrants partial or total removal from the wild for purposes of rescue/salvage, the establishment of refugia, initiation of research, or controlled propagation.

2. In the event that the current recovery plan fails to identify the establishment of refugia, initiation of propagation research, or controlled propagation as recovery tasks, the recovery plan will be updated or revised as appropriate. Recovery plans in preparation will be amended to reflect the changed status of the listed species and provide justifications as necessary.

3. Within 6 months of the effective date of this policy, the responsible Services' Regional Directors/Assistant Administrator will identify all listed species for which they have the lead recovery responsibility that are: (1) Being held in refugia; (2) involved in pre-propagation research; (3) undergoing controlled propagation; and, (4) if so, at what level and for what recovery purposes (e.g., augmentation of extant populations, establishment of new populations). The status of each species with regard to conformity with this policy will also be reported to the appropriate Regional and Washington D.C. offices.

4. Continuation of those programs not in conformity 12 months following implementation of this policy, shall require Director's/Assistant Administrator's concurrence. The Regional Director shall provide his/her recommendation to the Service Director/Assistant Administrator.

I. Annual Reporting Requirements

Annual reports will be prepared by the responsible Regional authority and submitted to the Director/Assistant Administrator not later than October 31. Reports will contain the following information for each species being maintained in refugia, in pre-propagation research, and under propagation:

—Recovery priority number;
—Policy criteria that are not met (if any);
—A description of the controlled propagation program, including the objectives and status;
—List of cooperators;
—Expenditures for the past fiscal year; and,
—Prospects for and obstacles to achieving research, controlled propagation, or reintroduction objectives.

Both FWS and NMFS agree to exchange programmatic information regarding controlled propagation of species of mutual interest on request, and that access to such information will include but not be limited to, budgetary information if required.

J. Authorities

Endangered Species Act of 1973, as amended; Marine Mammal Protection Act of 1972, as amended; Animal Welfare Act; Lacey Act; Fish and Wildlife Act of 1956; and National Environmental Policy Act.

K. Supersessions

All previously issued documents regarding this subject shall be revised, as necessary, to be consistent with this policy.

Footnotes:

(1) Determination of biological ''suitability'' may include, but should not necessarily be limited to, analysis of geomorphological similarities of habitat, genetic similarity, phenotypic characteristics, stock histories, habitat use, and other ecological, biological, and behavioral indicators.

(2) Protocols should identify disposition of individuals that die during holding, research, or propagation. Specimens can be valuable sources of tissue for genetic research. Disposition of remains in biological collections should also be considered.

(3) The Services recognize that reproduction among organisms maintained in a controlled environment may occur under a variety of circumstances that may not be necessarily predictable or desirable. Reproduction of individuals under such circumstances may not be desirable and culling or disposal of surplus offspring or seeds may be necessary. Therefore, controlled propagation activities should not be initiated without the inclusion of these provisions, the securing of required take permits, and other authorizations as necessary.

Public Comments Solicited

The Services intend that any final decision on this draft policy on controlled propagation of listed species be as accurate and as effective as possible and that it take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this draft policy are hereby solicited.

The final decision on this draft policy will take into consideration the comments and any additional information received by the Services, and such communications may lead to a decision that differs from this draft. The Services' decision will be published for public information.

Author/Editor: The editors of this draft policy are David Harrelson of the Fish and Wildlife Service's Division of Endangered Species, Mail Stop 452 ARLSQ, 1849 C Street, NW, Washington, DC 20240 (703/358–2171), and Marta Nammack of the National Marine Fisheries Service's Protected Species Management Division, 1335 East-West Highway, Silver Spring, Maryland 20910 (301/713–2322).

Authority: The authority for this proposed action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: February 1, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

Dated: February 1, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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February 7, 1996

Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

Policy Regarding the Recognition of District Vertebrate Population; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of policy.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) have adopted a policy to clarify their interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*) (Act).

ADDRESSES: The complete record pertaining to this action is available for inspection, by appointment, during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, in Room 452, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service at the above address (703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (301/713–1401).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*). (Act) requires the Secretary of the Interior or the Secretary of Commerce (depending on jurisdiction) to determine whether species are endangered or threatened. In defining ''species,'' the Act as originally passed included, ''* * * any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.'' In 1978, the Act was amended so that the definition read ''* * * any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' This change restricted application of this portion of the definition to vertebrates. The authority to list a ''species'' as endangered or threatened is thus not restricted to species as recognized in formal taxonomic terms, but extends to subspecies, and for vertebrate taxa, to distinct population segments (DPS's).

Because the Secretary must ''* * * determine whether any species is an endangered species or a threatened species'' (section 4(a)(1)), it is important that the term ''distinct population segment'' be interpreted in a clear and consistent fashion. Furthermore, Congress has instructed the Secretary to exercise this authority with regard to DPS's ''* * * sparingly and only when the biological evidence indicates that such action is warranted.'' (Senate Report 151, 96th Congress, 1st Session). The Services have used this authority relatively rarely; of over 300 native vertebrate species listed under the Act, only about 30 are given separate status as DPS's.

It is important in light of the Act's requirement to use the best available scientific information in determining the status of species that this interpretation follows sound biological principles. Any interpretation adopted should also be aimed at carrying out the purposes of the Act (i.e., ''* * * to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section'' (section 2(b)).

Available scientific information provides little specific enlightenment in interpreting the phrase ''distinct population segment.'' This term is not commonly used in scientific discourse, although ''population'' is an important term in a variety of contexts. For instance, a population may be circumscribed by a set of experimental conditions, or it may approximate an ideal natural group of organisms with approximately equal breeding opportunities among its members, or it may refer to a loosely bounded, regionally distributed collection of organisms. In all cases, the organisms in a population are members of a single species or lesser taxon.

The National Marine Fisheries Service (NMFS) has developed a Policy on the Definition of Species under the Endangered Species Act (56 FR 58612–58618; November 20, 1991). The policy applies only to species of salmonids native to the Pacific. Under this policy, a stock of Pacific salmon is considered a DPS if it represents an evolutionarily significant unit (ESU) of a biological species. A stock must satisfy two criteria to be considered an ESU:

(1) It must be substantially reproductively isolated from other conspecific population units; and

(2) It must represent an important component in the evolutionary legacy of the species.

This document adopts an interpretation of the term ''distinct population segment'' for the purposes of listing, delisting, and reclassifying vertebrates by the U.S. Fish and Wildlife Service (FWS) and NMFS. The Services believe that the NMFS policy, as described above, on Pacific salmon is consistent with the policy outlined in this notice. The NMFS policy is a detailed extension of this joint policy. Consequently, NMFS will continue to exercise its policy with respect to Pacific salmonids

The Services' draft policy on this subject was published on December 21, 1994 (59 FR 65885) and public comment was invited. After review of comments and further consideration, the Services adopt the policy as issued in draft form.

Summary of Comments and Recommendations

The Services received 31 letters from individuals and organizations commenting on the draft policy. In addition, since publication of the draft policy, the National Academy of Sciences, National Research Council (NRC), has published a report titled ''Science and the Endangered Species Act,'' prepared by a committee appointed by the Academy at the request of several members of Congress. This report in part examines the definition of ''species'' under the Act, and endorses the recognition of scientifically identified evolutionary units for conservation purposes. It discusses the recognition of DPS's in terms of ''distinctiveness,'' which is consistent with the concept of ''discreteness'' as presented in the draft policy except that it would not recognize an international political boundary to delimit a DPS. The committee noted that: ''Although there can be good policy reasons for such delineations, there are not sound scientific reasons to delineate species only in accordance with political boundaries.'' The Services agree that the inclusion of international boundaries in determining whether a population segment is discrete is sometimes undertaken as a matter of policy rather than science. Although the committee

expressed the belief that application of a distinctiveness test (analogous to the standard of discreteness in the policy) would adequately carry out the congressional instruction that the authority to address DPS's be exercised sparingly, the Services continue to believe that a judgement regarding the significance of any unit found to be discrete is necessary to comply with congressional intent.

Respondents presented a wide range of opinion regarding the recognition of DPS's. Some argued that the draft policy would be too restrictive and make it difficult or impossible to protect important elements of biodiversity; others maintained that the draft was not restrictive enough and would allow the Services to extend protection to entities never intended to be eligible for protection under the Act. A few respondents questioned the need for any policy framework and advocated case-by-case determinations of the eligibility of entities for listing under the DPS provision. The Services continue to believe that the Act will be best administered if there is a general policy framework governing the recognition of DPS's that can be disseminated and understood by the affected public.

Several respondents questioned the relationship of the draft policy to the NMFS policy regarding salmonids. The Services believe that the NMFS policy for salmonids is consistent with the general policy outlined in this notice, although the salmonid policy is formulated specifically to address the biology of this group. Several respondents also questioned the use of qualifying words such as ''significant'' or ''markedly'' in the policy. The Services intended these words to have their commonly understood senses. At the time any distinct population is recognized or not recognized the reasons for which it is believed to satisfy or not satisfy the conditions of the policy will be fully explained.

Several respondents maintained that a policy of this nature required adoption under rulemaking procedures of the Administrative Procedure Act. The Services disagree, and continue to regard the policy as non-regulatory in nature. Specific recommendations advanced by respondents are paraphrased and responded to below.

Only Full Species are Genetically Distinct From one Another, and Listing Should Only be Extended to These Genetically Distinct Entities.

Restricting listings to full taxonomic species would render the Act's definition of species, which explicitly includes subspecies and DPS's of vertebrates, superfluous. Clearly, the Act is intended to authorize listing of some entities that are not accorded the taxonomic rank of species, and the Services are obliged to interpret this authority in a clear and reasonable manner.

The Services Should Focus on Genetic Distinctness in Recognizing a Distinct Population Segment. Conversely, Some Respondents Believed There Should be No Requirement That a DPS be Genetically Differentiated or Recognizable for it to be Protected Under the Act

There appears to be a diversity of understanding regarding the purposes of the Act, with some individuals viewing it as directed almost exclusively toward the conservation of unique genetic resources while other individuals emphasize its stated intention of conserving ecosystems. This diversity of viewpoints is reflected in comments addressing the role to be played by genetic information in the draft policy. The Services understand the Act to support interrelated goals of conserving genetic resources and maintaining natural systems and biodiversity over a representative portion of their historic occurrence. The draft policy was intended to recognize both these intentions, but without focusing on either to the exclusion of the other. Thus, evidence of genetic distinctness or of the presence of genetically determined traits may be important in recognizing some DPS's, but the draft policy was not intended to always specifically require this kind of evidence in order for a DPS to be recognized. The ESU policy of NMFS also does not require genetic data before an ESU can be identified. Thus in determining whether the test for discreteness has been met under the policy, the Services allow but do not require genetic evidence to be used. At least one respondent evidently understood the draft policy to require that genetic distinctness be demonstrated before a DPS could be recognized, and criticized the draft on that basis. As explained above, this was never intended.

The Elements Describing Reasons for Considering a Population Segment Significant Should be Laid Out Comprehensively, Rather Than Presented as an Open-Ended Set of Examples as in the Draft Policy

The Services appreciate the need to make a policy on this subject as complete and comprehensive as possible, but continue to believe that it is not possible to describe in advance all the potential attributes that could be considered to support a conclusion that a particular population segment is ''significant'' in terms of the policy. When a distinct population is accepted or rejected for review pursuant to a petition or proposed for listing or delisting, the Services intend to explain in detail why it is considered to satisfy both the discreteness and significance tests of the policy.

In Assessing the Significance of a Potential Distinct Population Segment, the Services Should Focus on its Importance to the Status of the Species to Which it Belongs. Alternatively, the Services Should Emphasize the Importance of a Potential DPS to the Environment in Which it Occurs

Despite its orientation toward conservation of ecosystems, the Services do not believe the Act provides authority to recognize a potential DPS as significant on the basis of the importance of its role in the ecosystem in which it occurs. In addition, it may be assumed that most, if not all, populations play roles of some significance in the environments to which they are native, so that this importance might not afford a meaningful way to differentiate among populations. On the other hand, populations commonly differ in their importance to the overall welfare of the species they represent, and it is this importance that the policy attempts to reflect in the consideration of significance.

International Boundaries are not Appropriate in Determining That a Population is Discrete in the Draft Policy; Political Boundaries Other Than Those Between Nations may be Appropriate in Some Cases to Delimit DPS's

The Services recognize that the use of international boundaries as a measure of discreteness may introduce an artificial and non-biological element to the recognition of DPS's. Nevertheless, it appears to be reasonable for national legislation, which has its principal effects on a national scale, to recognize units delimited by international boundaries when these coincide with differences in the management, status, or exploitation of a species. Recognition of international boundaries in this way is also consistent with practice under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which is implemented in the United States by the Act. Recognition of other political boundaries, such as State lines within the United States, would appear to lead to the recognition of

entities that are primarily of conservation interest at the State and local level, and inappropriate as a focus for a national program. The Services recognize, as suggested in some comments, that infra-national political boundaries offer opportunities to provide incentives for the favorable management of species if they were used as a basis for recognizing discrete entities for delisting or for exclusion from a listing. Particularly when applied to the delisting or reclassification of a relatively widespread species for which a recovery program is being successfully carried out in some States, recognition of State boundaries would offer attractive possibilities. Nevertheless, the Act provides no basis for applying different standards for delisting than those adopted for listing. If the Services do not consider entities for listing that are not primarily of conservation interest at a national level, they must also refrain from delisting or reclassifying units at this level.

Complete Reproductive Isolation Should be Required as a Prerequisite to the Recognition of a Distinct Population Segment

The Services do not consider it appropriate to require absolute reproductive isolation as a prerequisite to recognizing a distinct population segment. This would be an impracticably stringent standard, and one that would not be satisfied even by some recognized species that are known to sustain a low frequency of interbreeding with related species.

The Services Should Emphasize Congress' Instruction to use Their Authority to Dddress DPS's ''Sparingly''

The Services believe that application of the policy framework announced in this document will lead to consistent and sparing exercise of the authority to address DPS's, in accord with congressional instruction.

The Occurrence of a Population Segment in an Unusual Setting Should not be Used as Evidence for its Significance

The Services continue to believe that occurrence in an unusual ecological setting is potentially an indication that a population segment represents a significant resource of the kind sought to be conserved by the Act. In any actual case of a DPS recognized in part on this basis, the Services will describe in detail the nature of this significance when accepting a petition or proposing a rule.

The Authority to Address DPS's Should be Extended to Plant and Invertebrate Species

The Services recognize the inconsistency of allowing only vertebrate species to be addressed at the level of DPS's, and the findings of the NRC committee also noted that such recognition would be appropriate for other species. Nevertheless, the Act is perfectly clear and unambiguous in limiting this authority. This policy acknowledges the specific limitations imposed by the Act on the definition of ''species.''

The Services Should Stress Uniqueness and Irreplaceability of Ecological Functions in Recognizing DPS's

The Services consider the Act to be directed at maintenance of species and populations as elements of natural diversity. Consequently, the principal significance to be considered in a potential DPS will be the significance to the taxon to which it belongs. The respondent appears to be recommending that the Services consider the significance of a potential DPS to the community or ecosystem in which it occurs and the likelihood of another species filling its niche if it should be extirpated from a particular portion of its range. These are important considerations in general for the maintenance of healthy ecosystems, and they often coincide with conservation programs supported by the Act. Nevertheless, the Act is not intended to establish a comprehensive biodiversity conservation program, and it would be improper for the Services to recognize a potential DPS as significant and afford it the Act's substantive protections solely or primarily on these grounds.

Congress did not Intend to Require That DPS's be Discrete. In a Similar Vein, Congress did not Require That a Potential DPS be Significant to be Considered Under the Act

With regard to the discreteness standard, the Services believe that logic demands a distinct population recognized under the Act be circumscribed in some way that distinguishes it from other representatives of its species. The standard established for discreteness is simply an attempt to allow an entity given DPS status under the Act to be adequately defined and described. If some level of discreteness were not required, it is difficult to imagine how the Act could be effectively administered or enforced. At the same time, the standard adopted does not require absolute separation of a DPS from other members of its species, because this can rarely be demonstrated in nature for any population of organisms. The standard adopted is believed to allow entities recognized under the Act to be identified without requiring an unreasonably rigid test for distinctness. The requirement that a DPS be significant is intended to carry out the expressed congressional intent that this authority be exercised sparingly as well as to concentrate conservation efforts undertaken under the Act on avoiding important losses of genetic diversity.

A Population Should Only be Required to be Discrete or Significant, but not Both, to be Recognized as a Distinct Population Segment

The measures of discreteness and significance serve decidedly different purposes in the policy, as explained above. The Services believe that both are necessary for a policy that is workable and that carries out congressional intent. The interests of conserving genetic diversity would not be well served by efforts directed at either well-defined but insignificant units or entities believed to be significant but around which boundaries cannot be recognized.

Requiring That a DPS be Discrete Effectively Prevents the Loss of Such a Segment From Resulting in a Gap in the Distribution of a Species. Essentially, if Distinct Populations are Entirely Separate, the Loss of One Has Little Significance to the Others

If the standard for discreteness were very rigid or absolute, this could very well be true. However, the standard adopted allows for some limited interchange among population segments considered to be discrete, so that loss of an interstitial population could well have consequences for gene flow and demographic stability of a species as a whole. On the other hand, not only population segments whose loss would produce a gap in the range of a species can be recognized as significant, so that a nearly or completely isolated population segment could well be judged significant on other grounds and recognized as a distinct population segment.

The Services Lack Authority to Address DPS's of Subspecies

The Services maintain that the authority to address DPS's extends to species in which subspecies are recognized, since anything included in the taxon of lower rank is also included in the higher ranking taxon.

The following principles will guide the Services' listing, delisting and reclassification of DPS's of vertebrate species. Any proposed or final rule affecting status determination for a DPS would clearly analyze the action in light of these guiding principles.

Policy

Three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for addition to the lists of endangered and threatened wildlife and plants, reclassification, and removal from the lists:

1. Discreteness of the population segment in relation to the remainder of the species to which it belongs;
2. The significance of the population segment to the species to which it belongs; and
3. The population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?).

Discreteness: A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions:

1. It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.
2. It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Significance: If a population segment is considered discrete under one or more of the above conditions, its biological and ecological significance will then be considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used ''* * * sparingly'' while encouraging the conservation of genetic diversity. In carrying out this examination, the Services will consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following:

1. Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,
2. Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon,
3. Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or
4. Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Because precise circumstances are likely to vary considerably from case to case, it is not possible to describe prospectively all the classes of information that might bear on the biological and ecological importance of a discrete population segment.

Status: If a population segment is discrete and significant (i.e., it is a distinct population segment) its evaluation for endangered or threatened status will be based on the Act's definitions of those terms and a review of the factors enumerated in section 4(a). It may be appropriate to assign different classifications to different DPS's of the same vertebrate taxon.

Relationship to Other Activities

The Fish and Wildlife Service's Listing and Recovery Priority Guidelines (48 FR 43098; September 21, 1983) generally afford DPS's the same consideration as subspecies, but when a subspecies and a DPS have the same numerical priority, the subspecies receives higher priority for listing. The Services will continue to generally accord subspecies higher priority than DPS's.

Any DPS of a vertebrate taxon that was listed prior to implementation of this policy will be reevaluated on a case-by-case basis as recommendations are made to change the listing status for that distinct population segment. The appropriate application of the policy will also be considered in the 5-year reviews of the status of listed species required by section 4(c)(2) of the Act.

Effects of Policy

This guides the evaluation of distinct vertebrate population segments for the purposes of listing, delisting, and reclassifying under the Act. The only direct effect of the policy is to accept or reject population segments for these purposes. More uniform treatment of DPS's will allow the Services, various other government agencies, private individuals and organizations, and other interested or concerned parties to better judge and concentrate their efforts toward the conservation of biological resources at risk of extinction.

Listing, delisting, or reclassifying distinct vertebrate population segments may allow the Services to protect and conserve species and the ecosystems upon which they depend before large-scale decline occurs that would necessitate listing a species or subspecies throughout its entire range. This may allow protection and recovery of declining organisms in a more timely and less costly manner, and on a smaller scale than the more costly and extensive efforts that might be needed to recover an entire species or subspecies. The Services' ability to address local issues (without the need to list, recover, and consult rangewide) will result in a more effective program.

Author/Editor: The editors of this policy are Dr. John J. Fay of the Fish and Wildlife Service's Division of Endangered Species, 452 ARLSQ, Washington, DC 20240 (703/358–2105) and Marta Nammack of the National Marine Fisheries Service's Endangered Species Division, 1335 East-West Highway, Silver Spring, Maryland 20910 (301/713–2322).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 1, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

Dated: February 1, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–2639 Filed 2–6–96; 8:45 am]

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Wednesday
February 7, 1996

Part V

The President

Executive Order 12988—Civil Justice Reform

Federal Register
Vol. 61, No. 26
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Presidential Documents

Title 3—

The President

Executive Order 12988 of February 5, 1996

Civil Justice Reform

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to improve access to justice for all persons who wish to avail themselves of court and administrative adjudicatory tribunals to resolve disputes, to facilitate the just and efficient resolution of civil claims involving the United States Government, to encourage the filing of only meritorious civil claims, to improve legislative and regulatory drafting to reduce needless litigation, to promote fair and prompt adjudication before administrative tribunals, and to provide a model for similar reforms of litigation practices in the private sector and in various states, it is hereby ordered as follows:

Section 1. *Guidelines to Promote Just and Efficient Government Civil Litigation.* To promote the just and efficient resolution of civil claims, those Federal agencies and litigation counsel that conduct or otherwise participate in civil litigation on behalf of the United States Government in Federal court shall respect and adhere to the following guidelines during the conduct of such litigation:

(a) *Pre-filing Notice of a Complaint.* No litigation counsel shall file a complaint initiating civil litigation without first making a reasonable effort to notify all disputants about the nature of the dispute and to attempt to achieve a settlement, or confirming that the referring agency that previously handled the dispute has made a reasonable effort to notify the disputants and to achieve a settlement or has used its conciliation processes.

(b) *Settlement Conferences.* As soon as practicable after ascertaining the nature of a dispute in litigation, and throughout the litigation, litigation counsel shall evaluate settlement possibilities and make reasonable efforts to settle the litigation. Such efforts shall include offering to participate in a settlement conference or moving the court for a conference pursuant to Rule 16 of the Federal Rules of Civil Procedure in an attempt to resolve the dispute without additional civil litigation.

(c) *Alternative Methods of Resolving the Dispute in Litigation.* Litigation counsel shall make reasonable attempts to resolve a dispute expeditiously and properly before proceeding to trial.

(1) Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlements rather than through utilization of any formal court proceeding. Where the benefits of Alternative Dispute Resolution (''ADR'') may be derived, and after consultation with the agency referring the matter, litigation counsel should suggest the use of an appropriate ADR technique to the parties.

(2) It is appropriate to use ADR techniques or processes to resolve claims of or against the United States or its agencies, after litigation counsel determines that the use of a particular technique is warranted in the context of a particular claim or claims, and that such use will materially contribute to the prompt, fair, and efficient resolution of the claims.

(3) To facilitate broader and effective use of informal and formal ADR methods, litigation counsel should be trained in ADR techniques.

(d) *Discovery.* To the extent practical, litigation counsel shall make every reasonable effort to streamline and expedite discovery in cases under counsel's supervision and control.

(1) *Review of Proposed Document Requests.* Each agency within the executive branch shall establish a coordinated procedure for the conduct and review of document discovery undertaken in litigation directly by that agency when that agency is litigation counsel. The procedure shall include, but is not necessarily limited to, review by a senior lawyer prior to service or filing of the request in litigation to determine that the request is not cumulative or duplicative, unreasonable, oppressive, unduly burdensome or expensive, taking into account the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained from some other source that is more convenient, less burdensome, or less expensive.

(2) *Discovery Motions.* Before petitioning a court to resolve a discovery motion or petitioning a court to impose sanctions for discovery abuses, litigation counsel shall attempt to resolve the dispute with opposing counsel. If litigation counsel makes a discovery motion concerning the dispute, he or she shall represent in that motion that any attempt at resolution was unsuccessful or impracticable under the circumstances.

(e) *Sanctions.* Litigation counsel shall take steps to seek sanctions against opposing counsel and opposing parties where appropriate.

(1) Litigation counsel shall evaluate filings made by opposing parties and, where appropriate, shall petition the court to impose sanctions against those responsible for abusive practices.

(2) Prior to filing a motion for sanctions, litigation counsel shall submit the motion for review to the sanctions officer, or his or her designee, within the litigation counsel's agency. Such officer or designee shall be a senior supervising attorney within the agency, and shall be licensed to practice law before a State court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States. The sanctions officer or designee shall also review motions for sanctions that are filed against litigation counsel, the United States, its agencies, or its officers.

(f) *Improved Use of Litigation Resources.* Litigation counsel shall employ efficient case management techniques and shall make reasonable efforts to expedite civil litigation in cases under that counsel's supervision and control. This includes but is not limited to:

(1) making reasonable efforts to negotiate with other parties about, and stipulate to, facts that are not in dispute;

(2) reviewing and revising pleadings and other filings to ensure that they are accurate and that they reflect a narrowing of issues, if any, that has resulted from discovery;

(3) requesting early trial dates where practicable;

(4) moving for summary judgment in every case where the movant would be likely to prevail, or where the motion is likely to narrow the issues to be tried; and

(5) reviewing and revising pleadings and other filings to ensure that unmeritorious threshold defenses and jurisdictional arguments, resulting in unnecessary delay, are not raised.

Sec. 2. *Government Pro Bono and Volunteer Service.* All Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline.

Sec. 3. *Principles to Enact Legislation and Promulgate Regulations Which Do Not Unduly Burden the Federal Court System.*

(a) *General Duty to Review Legislation and Regulations.* Within current budgetary constraints and existing executive branch coordination mechanisms and procedures established in OMB Circular A-19 and Executive Order No. 12866, each agency promulgating new regulations, reviewing existing regulations, developing legislative proposals concerning regulations, and developing new legislation shall adhere to the following requirements:

(1) The agency's proposed legislation and regulations shall be reviewed by the agency to eliminate drafting errors and ambiguity;

(2) The agency's proposed legislation and regulations shall be written to minimize litigation; and

(3) The agency's proposed legislation and regulations shall provide a clear legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction.

(b) *Specific Issues for Review.* In conducting the reviews required by subsection (a), each agency formulating proposed legislation and regulations shall make every reasonable effort to ensure:

(1) that the legislation, as appropriate—

(A) specifies whether all causes of action arising under the law are subject to statutes of limitations;

(B) specifies in clear language the preemptive effect, if any, to be given to the law;

(C) specifies in clear language the effect on existing Federal law, if any, including all provisions repealed, circumscribed, displaced, impaired, or modified;

(D) provides a clear legal standard for affected conduct;

(E) specifies whether private arbitration and other forms of private dispute resolution are appropriate under enforcement and relief provisions; subject to constitutional requirements;

(F) specifies whether the provisions of the law are severable if one or more of them is found to be unconstitutional;

(G) specifies in clear language the retroactive effect, if any, to be given to the law;

(H) specifies in clear language the applicable burdens of proof;

(I) specifies in clear language whether it grants private parties a right to sue and, if so, the relief available and the conditions and terms for authorized awards of attorney's fees, if any;

(J) specifies whether State courts have jurisdiction under the law and, if so, whether and under what conditions an action would be removable to Federal court;

(K) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(L) sets forth the standards governing the assertion of personal jurisdiction, if any;

(M) defines key statutory terms, either explicitly or by reference to other statutes that explicitly define those terms;

(N) specifies whether the legislation applies to the Federal Government or its agencies;

(O) specifies whether the legislation applies to States, territories, the District of Columbia, and the Commonwealths of Puerto Rico and of the Northern Mariana Islands;

(P) specifies what remedies are available such as money damages, civil penalties, injunctive relief, and attorney's fees; and

(Q) addresses other important issues affecting clarity and general draftsmanship of legislation set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget (''OMB'') and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(2) that the regulation, as appropriate—

(A) specifies in clear language the preemptive effect, if any, to be given to the regulation;

(B) specifies in clear language the effect on existing Federal law or regulation, if any, including all provisions repealed, circumscribed, displaced, impaired, or modified;

(C) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction;

(D) specifies in clear language the retroactive effect, if any, to be given to the regulation;

(E) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(F) defines key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items; and

(G) addresses other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of OMB and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(c) *Agency Review.* The agencies shall review such draft legislation or regulation to determine that either the draft legislation or regulation meets the applicable standards provided in subsections (a) and (b) of this section, or it is unreasonable to require the particular piece of draft legislation or regulation to meet one or more of those standards.

Sec. 4. *Principles to Promote Just and Efficient Administrative Adjudications.*

(a) *Implementation of Administrative Conference Recommendations.* In order to promote just and efficient resolution of disputes, an agency that adjudicates administrative claims shall, to the extent reasonable and practicable, and when not in conflict with other sections of this order, implement the recommendations of the Administrative Conference of the United States, entitled ''Case Management as a Tool for Improving Agency Adjudication,'' as contained in 1 C.F.R. 305.86-7 (1991).

(b) *Improvements in Administrative Adjudication.* All Federal agencies should review their administrative adjudicatory processes and develop specific procedures to reduce delay in decision-making, to facilitate self-representation where appropriate, to expand non-lawyer counseling and representation where appropriate, and to invest maximum discretion in fact-finding officers to encourage appropriate settlement of claims as early as possible.

(c) *Bias.* All Federal agencies should review their administrative adjudicatory processes to identify any type of bias on the part of the decision-makers that results in an injustice to persons who appear before administrative adjudicatory tribunals; regularly train all fact-finders, administrative law judges, and other decision-makers to eliminate such bias; and establish appropriate mechanisms to receive and resolve complaints of such bias from persons who appear before administrative adjudicatory tribunals.

(d) *Public Education.* All Federal agencies should develop effective and simple methods, including the use of electronic technology, to educate the public about its claims/benefits policies and procedures.

Sec. 5. *Coordination by the Department of Justice.*

(a) The Attorney General shall coordinate efforts by Federal agencies to implement sections 1, 2 and 4 of this order.

(b) To implement the principles and purposes announced by this order, the Attorney General is authorized to issue guidelines implementing sections 1 and 4 of this order for the Department of Justice. Such guidelines shall serve as models for internal guidelines that may be issued by other agencies pursuant to this order.

Sec. 6. *Definitions.* For purposes of this order:

(a) The term ''agency'' shall be defined as that term is defined in section 105 of title 5, United States Code.

(b) The term ''litigation counsel'' shall be defined as the trial counsel or the office in which such trial counsel is employed, such as the United States Attorney's Office for the district in which the litigation is pending or a litigating division of the Department of Justice. Special Assistant United States Attorneys are included within this definition. Those agencies authorized by law to represent themselves in court without assistance from the Department of Justice are also included in this definition, as are private counsel hired by any Federal agency to conduct litigation on behalf of the agency or the United States.

Sec. 7. *No Private Rights Created.* This order is intended only to improve the internal management of the executive branch in resolving disputes, conducting litigation in a reasonable and just manner, and reviewing legislation and regulations. This order shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order. Nothing in this order shall be construed to obligate the United States to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to forego seeking a consent decree or other relief, or to alter any existing delegation of settlement or litigating authority.

Sec. 8. *Scope.*

(a) *No Applicability to Criminal Matters or Proceedings in Foreign Courts.* This order is applicable to civil matters only. It is not intended to affect criminal matters, including enforcement of criminal fines or judgments of criminal forfeiture. This order does not apply to litigation brought by or against the United States in foreign courts or tribunals.

(b) *Application of Notice Provision.* Notice pursuant to subsection (a) of section 1 is not required (1) in any action to seize or forfeit assets subject to forfeiture or in any action to seize property; (2) in any bankruptcy, insolvency, conservatorship, receivership, or liquidation proceeding; (3) when the assets that are the subject of the action or that would satisfy the judgment are subject to flight, dissipation, or destruction; (4) when the defendant is subject to flight; (5) when, as determined by litigation counsel, exigent circumstances make providing such notice impracticable or such notice would otherwise defeat the purpose of the litigation, such as in actions seeking temporary restraining orders or preliminary injunctive relief; or (6) in those limited classes of cases where the Attorney General determines that providing such notice would defeat the purpose of the litigation.

(c) *Additional Guidance as to Scope.* The Attorney General shall have the authority to issue further guidance as to the scope of this order, except section 3, consistent with the purposes of this order.

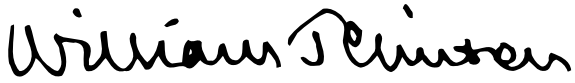
Sec. 9. *Conflicts with Other Rules.* Nothing in this order shall be construed to require litigation counsel or any agency to act in a manner contrary to the Federal Rules of Civil Procedure, Tax Court Rules of Practice and Procedure, State or Federal law, other applicable rules of practice or procedure, or court order.

Sec. 10. *Privileged Information.* Nothing in this order shall compel or authorize the disclosure of privileged information, sensitive law enforcement infor-

mation, information affecting national security, or information the disclosure of which is prohibited by law.

Sec. 11. *Effective Date.* This order shall become effective 90 days after the date of signature. This order shall not apply to litigation commenced prior to the effective date.

Sec. 12. *Revocation*. Executive Order No. 12778 is hereby revoked.



THE WHITE HOUSE,
February 5, 1996.

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Metalaxyl; published 2-7-96

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Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

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Loan and purchase programs:

Foreign markets for agricultural commodities; development agreements; comments due by 2-15-96; published 2-1-96

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Grain standards:

Rice; fees; comments due by 2-12-96; published 1-11-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

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Pacific halibut fisheries

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Acquisition regulations:

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Credit by banks for purpose of purchasing or carrying margin stocks (Regulation U)

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GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Disaster Relief Act activities; comments due by 2-12-96; published 12-12-95

Impairment of long-lived assets; comments due by 2-12-96; published 12-14-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Hazard Analysis Critical Control Point (HACCP) principles:

Fish and fishery products, safe processing and importing; procedures; comments due by 2-16-96; published 12-18-95

Medical devices:

Unapproved devices; export requirements; comments due by 2-12-96; published 11-27-95

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Disaster Relief Act activities; comments due by 2-12-96; published 12-12-95

Impairment of long-lived assets; comments due by 2-12-96; published 12-14-95

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Trade Representative, Office of United States

NAFTA tariff-rate quotas; weekly allocation:

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National Highway Traffic Safety Administration

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Hazardous materials:

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**. A cumulative list of Public Laws for the First Session of the 104th Congress was published in Part II of the **Federal Register** on February 1, 1996.

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